COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES
DIVISION OF PURCHASES AND SUPPLY
1111 EAST BROAD STREET
P. O. BOX 1199
RICHMOND, VIRGINIA 23218-1199

See Changes Annotated in Red

August 12, 2013

NOTICE OF CONTRACT RENEWAL: STATEWIDE TERM CONTRACT

Contract Title: **Consulting Services** **Category 14: RISK MANAGEMENT & INTERNAL CONTROLS STANDARDS**
(see page 5 for description)

Contract Number: PF14804C14-09

Awarded Contractor:

PRAGMATIC SOLUTIONS, INC.

(see *Contractor Data Sheet* for contractor information)

Contract Period: 8/14/2013 through 8/13/2014

Authorized Users: State Agencies and other public bodies

NIGP Code: 91800 Consulting Services eVA Procurement Folder: 14804

THIS CONTRACT, INCLUDING ATTACHMENTS AND CHANGES, IS AVAILABLE AT THE eVA WEBSITE: www.eva.virginia.gov . CONTRACT ATTACHMENTS INCLUDE:

- PRICING AND QUOTE WORKBOOK
- CONTRACTOR DATA SHEET
- BEST VALUE INCENTIVES SHEET
- QUARTERLY REPORT

CONTRACT OFFICER: Sandra D. White, VCO
Statewide Services Contract Officer
Telephone: 804-786-0078 Fax: 804-786-5413
Email: sandra.white@dgs.virginia.gov

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

TABLE OF CONTENTS:

CONTRACT OVERVIEW

DESCRIPTION OF SERVICES

INSTRUCTIONS

CONTRACT PRECEDURES/REQUIREMENTS

TERMS AND CONDITIONS SUMMARY

Read entire contract prior to using contract.

CONTRACT OVERVIEW

This optional-use contract incorporates Request for Proposals (RFP) 84 *Set-aside for Small Businesses-Consulting Services*, issued 01/31/2007 by the Department of General Services, Division of Purchases and Supply, including the RFP amendments, terms and conditions, contractor's proposal and negotiated changes.

This contract offers a variety of non-technology consulting services for use by Commonwealth of Virginia state agencies and other public bodies on an as-needed basis. **Services covered by this solicitation do not include information technology and telecommunications related services provided by the Virginia Information Technologies Agency (VITA). In addition, this contract is for consulting services, not for the development and/or delivery of training a consultant may recommend as being needed by an agency.** Training may be available from the training and development unit of the Commonwealth of Virginia Department of Human Resource Management (DHRM) (web address: http://www.dhrm.state.va.us/) and/or the Virginia Information Technologies Agency (VITA) (web address: http://www.vita.virginia.gov/). If the required training is unavailable from DHRM and/or VITA, and the agency decides to use applicable procurement policies and procedures to establish a contract for such training that is separate from the consulting services contract, the eligibility of a consulting contractor named on this statewide consulting contract to compete for such separate contracts will be determined by the guidelines found in the APSPM Chapter 3, section 3.16b, Vendors Manual Chapter 3, 3.6 b (manuals are available at www.eva.virginia.gov) and the Code of Virginia, § 2.2-4373 (available at http://leg1.state.va.us/000/src.htm).

Consulting services covered by this solicitation are defined as advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm, or organization under contract to that agency. Services covered by this solicitation are intended to be "Nonprofessional Services" as defined in the

Commonwealth of Virginia *Agency Procurement and Surplus Property Manual (APSPM).*

Agencies are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of agency mission, programs, priorities, and funding. **As required by the Appropriations Act each year, Use Of Consulting Services, all state agencies and institutions of higher education shall make a determination of "return on investment" as part of the criteria for awarding or using contracts for consulting service. Reference Chapter 4, section 4.22 of the Commonwealth of Virginia Agency Procurement and Surplus Property Manual (APSPM), especially section 4.22d, for additional information on individual services and consulting services. The state has developed the capability for providing certain technical and managerial assistance through selected central agencies, and agencies shall not engage outside firms to perform such services offered by other state agencies without first examining their possible use (reference section 4.22d).**

Fifteen (15) contracts resulted from RFP 84, one for each of the following fifteen consulting categories identified in the RFP:

Contract #:

PF14804CO1-09 Category 1: STRATEGIC PLANNING

PF14804CO2-09 Category 2: PERFORMANCE MANAGEMENT/BALANCED SCORECARD

PF14804CO3-09 Category 3: PROCESS ASSESSMENT/IMPROVEMENT

PF14804CO4-09 Category 4: COMMUNICATIONS ASSESSMENTS

PF14804CO5-09 Category 5: CUSTOMER SERVICE PROGRAMS

PF14804CO6-09 Category 6: CHANGE MANAGEMENT

PF14804CO7-09 Category 7: EXECUTIVE COACHING

PF14804CO8-09 Category 8: FACILITATION

PF14804CO9-09 Category 9: ORGANIZATIONAL DESIGN

PF14804C10-09 Category 10: OPERATIONAL STRATEGIES

PF14804C11-09 Category 11: FINANCIAL SERVICE MANAGEMENT

PF14804C12-09 Category 12: BUSINESS PROCESS ANALYSIS AND REENGINEERING

PF14804C13-09 Category 13: WORK FORCE PLANNING AND DEVELOPMENT

PF14804C14-09 Category 14: RISK MANAGEMENT & INTERNAL CONTROLS STANDARDS

PF14804C15-09 Category 15: CONTINUITY OF OPERATIONS (COOP) PLANNING

Up to five (5) contractors were awarded for each category (contract). All 15 contracts and the names of the awarded contractors for each contract are available at the eVA website at www.eva.virginia.gov .

The state agency or other public body using this contract will create a scope of work based on its specific consulting needs. The Contractor's quote shall be based on the agency's scope of work and the contract terms, conditions and pricing. The contractor's pricing on a quote shall not exceed the contract pricing from the attached *Pricing and Quote Workbook*.

Contract PF14804C14-09 Risk Management & Internal Controls Standards *has only one contractor. Therefore, the Division of Purchases and Supply (DPS) recommends agencies and other public bodies perform a price reasonableness determination prior to issuing purchase orders over $5,000.00, and place this determination in your procurement file.*

Orders must be placed by the agency or other public body to the contractor through the eVA procurement system. Contractors shall pay eVA fees according to the terms and conditions identified in this contract.

ATTENTION AGENCIES AND OTHER PUBLIC BODIES: The contractor's hourly prices shown in the attached Pricing Schedule include all costs except travel-related expenses. A contractor's or subcontractor's actual travel-related expenses, including lodging, meals, and mileage, may be reimbursed by the agency as appropriate if all three (3) of the following conditions are met:

1) Detailed descriptive and price information for each travel-related expense is provided in the contractor's quote to the agency prior to award of the order to the contractor by the agency, and travel-related expenses are approved by the agency and included in the order to the contractor.

2) Travel-related expense reimbursements to contractors do not exceed the "State Travel Regulations" policies and limits in the most current Commonwealth of Virginia, Department of Accounts "Commonwealth Accounting Policies and Procedures (CAPP) Manual". The CAPP Manual is available at the DOA website at http://www.doa.virginia.gov , and State Travel Regulations can be found under Topic Number 20335. An agency may set more restrictive travel reimbursement requirements than those found in the CAPP Manual.

3) The contractor's hourly pricing rate will not be paid for the travel time of a contractor or subcontractor.

IMPORTANT: The Pricing Schedule describes the functional responsibilities for each of the five (5) job titles: Principal, Senior Consultant, Consultant, Junior Consultant, and Program & Administrative Support. Hourly prices under the contract will be paid for the hours a person spends providing these functional responsibilities. For example, some firms may have a specific individual for each job title and functional responsibility, and

that person may always perform as a senior consultant and be paid as such. Other firms may have one employee who will provide all the functional responsibilities for a specific project. For example, the same person may provide three (3) hours of work that meets the functional responsibilities of the "Principal" job title, eight (8) hours of work that meets the functional responsibilities of the "Consultant" job title, and four (4) hours of work that meets the functional responsibilities of the "Program and Administrative Support" job title. This person would be paid three (3) hours at the "Principal" hourly rate, eight (8) hours at the "Consultant" rate, and four (4) hours at the "Program and Administrative Support" rate. The hourly rate paid shall be consistent will the functions that are provided.

Please see below for more detailed contract information.

DESCRIPTION OF SERVICES

The following consulting category description provides an overview of the consulting category covered by this specific contract. The description below is not intended to identify all the consulting services that may be provided under this consulting category. In addition, an agency's scope of work for a specific consulting project may not include all the services identified in this consulting category. Services covered by this contract do not include information technology and telecommunications related services, which are provided through the Virginia Information Technologies Agency (VITA). The development and delivery of training is not included as part of this contract.

Category 14. RISK MANAGEMENT AND INTERNAL CONTROLS STANDARDS

DESCRIPTION OF SERVICES:
Assist in conducting a risk analysis and developing risk mitigation strategies for organizational strategic planning, human resources, workforce development and change, quality control programs, customer service/satisfaction and other areas. Conduct an assessment of the risks associated with a given project or study, and identify and quantify associated risks. Conduct research in methods to mitigate any identified risks, and recommend targeted mitigation strategies and plans. Assist in developing standards designed to reduce or eliminate risks in the execution of an operation, acquisition and implementation, workforce change, or any other project as required. Develop a Risk Management guide to provide a foundation for the development of an effective risk management program, containing both the definitions and the practical guidance necessary for assessing and mitigating risks. Provide written reports indicating the results of analysis, level of risk, mitigation strategies and recommendations. Assist in the development of internal control standards designed to mitigate or eliminate identified risks, along with surveillance methods and standardized actions for improvement and quality control. Assist in establishing a Quality Control Program to accompany a given organizational change. Assist in designing a quality control organization to include processes and staffing.

INSTRUCTIONS

1. ORDERS: Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia, as well as other public bodies of the Commonwealth of Virginia, must place orders through eVA when using this contract. The Contractor agrees not to accept orders under this contract unless the orders are placed through eVA.

2. The applicable contract number, contractor name, quote number, description of services to be provided and pricing must be shown on each purchase order and copy, each facsimile transmission or given verbally when telephonic orders are placed.

3. Review and approval of contractor's quote and invoice is the responsibility of the state agency or other public body that placed the order with the contractor.

4. Any complaint as to quality, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported to the Division of Purchases and Supply.

5. RENEWAL OF CONTRACT/PRICE ADJUSTMENTS: This statewide contract may be renewed by the Commonwealth for one one-year period under the terms and conditions of the original contract except as stated below. Price adjustments may be permitted for changes in the contractor's cost of providing goods and services. The "Services", "All Items", and other relevant categories of the CPI-U, U.S. City Average section of the Consumer Price Index of the U.S. Bureau of Labor Statistics, will be used as guides to evaluate requested price changes, as will other indices. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of 365 calendar days and each 365 calendar days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period. Contractor shall give not less than 30 days advance notice of any price increase request, with documentation, to the purchasing office.

   The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of goods or services are required to be communicated immediately to the purchasing office.

6. REPORTING AND DELIVERY INSTRUCTIONS:

   The contractor shall provide electronic copies of deliverables and reports as requested by state agencies and other public bodies.

Agency Report:: The contractor shall provide bi-weekly written progress reports to the Agency Contact. Said progress reports shall include the following information for the relevant two-week period: (a) Major Accomplishments, (b) Objectives for Next Two Weeks; (c) Problems/Issues (and recommended action); (d) any other specifics or reports as requested by the agency. Reports should reflect progress in relation to the scope of work, deliverables and schedule. The Contractor shall provide a final project completion report to the Agency Contact within two weeks of acceptance of final deliverable.

Division of Purchases and Supply (DPS) Report: The Contractor shall submit an annual report to the Division of Purchases and Supply. The report shows invoiced contract sales data for the previous 12 months for orders placed by Commonwealth of Virginia agencies and other public bodies. If no invoiced contract sales occurred during the year, the Contractor may email the DPS contract officer stating "No contract sales this year" instead of providing a report.

FAILURE TO PROVIDE THE ABOVE STATED REPORTS IN A TIMELY MANNER MAY RESULT IN CONTRACT TERMINATION.

7. Coverage: The contractor should provide consulting services for Commonwealth of Virginia agencies and other public bodies across all geographic areas of the Commonwealth.

CONTRACT PROCEDURES/REQUIREMENTS:

This section outlines ordering procedures to be used by state agencies and other public bodies when placing orders under the contract. The ordering procedures are for informational purposes only regarding the procedures the Commonwealth currently intends to require its agencies to follow, and shall remain subject to change at any time. The Contractor is agreeing that it will stand ready to follow the outlined procedures if they are used by the ordering agency, but the ordering procedures are not a contractual commitment to the contractor and are not to be construed as giving the Contractor a right to receive any particular request for quotes, nor as giving the Contractor a right to receive an order based on the strength of the Contractor's quote for specific consulting services, nor as otherwise limiting the freedom of state agencies and other public bodies to order from any vendor who has a state contract, to procure consulting services using other applicable procurement methods, or to decide against placing any order, even if it has sought quotes under this Contract. For the purposes of this contract, a using entity, whether a state agency or other public body, may be referred to as "agency" "agencies", or "the Commonwealth".

1. Read the "Contract Overview" section at the beginning of this contract. It contains important information on the proper use of this contract.

Contract PF14804C14-09 *Risk Management & Internal Controls Standards* has only one contractor. Therefore, the Division of Purchases and Supply (DPS) recommends agencies and other public bodies perform a price reasonableness

determination prior to issuing purchase orders over $5,000.00, and place this determination in your procurement file.

The agency will provide the contractor the scope of work, including specific deliverables and start/completion dates, and the contractor will provide a quote. It's recommended that the agency assign a project number to the scope of work. If the agency determines that the contractor should furnish additional insurance, a performance or other bond or other form of security for the faithful performance of work, or other special requirements, these requirements should be detailed in the scope of work. The agency is responsible for ensuring that the scope of work specifies the process for change order requests, and for detailing any special payment timetables based on completed deliverables. It's recommended that the agency and contractor agree on a lump sum fixed fee for the quote. Alternatively, the quote can be based on the hourly rate with a ceiling on the total dollars that can be expended, with payment made only for hours used. See APSPM Chapter 4, section 4.22d for suggested pricing schedule methods. If a scope of work covers more than one consulting category, the agency should consider developing their own solicitation and not using this contract. If more than one consulting category is involved in a scope of work, the agency may get quotes from contractors in different consulting categories, but must anticipate and be prepared to deal with how to resolve coordination issues with having two or more contractors working on the same project.

b. The contractor(s) shall review the scope of work and return a quote, providing, at a minimum, the agency's project number, a quote number, method of approach and details of the work to be performed, deliverables with timetables, detailed pricing indicating the cost elements necessary to complete the task(s), the name(s) and updated qualifications and/or resume(s) of the proposed contractor employees or subcontractors to be used for the scope of work, and any other specific details required by the agency. The attached *Pricing and Quote Workbook* should be used in providing the quote to the agency. The contractor is permitted to decline quote requests from agencies; however, repeated failure to provide quotes when requested may lead to removal of the contractor from the contract. Such action would not be grounds for termination for default. The quote is to be provided within ten calendar days of request from the agency, unless the agency and the contractor agree to a longer timeframe. The pricing in the quote must not exceed the contractor's pricing identified in the consulting services contract Pricing Schedule, and show a breakdown of all proposed charges. Hourly prices under the contract will be paid for the hours a person spends providing the functional responsibilities for each of the five (5) job titles: Principal, Senior Consultant, Consultant, Junior Consultant, and Program & Administrative Support. The hourly rate paid shall be consistent will the functions that are provided. The agency will review this information and determine if it is complete. The agency and contractor may negotiate changes to the scope and the quote, but contract pricing must not be exceeded and terms and conditions shall not be modified. If the agency has special requirements, including increased insurance, bonds or other forms of security, the contractor may include

such costs as separate line items in the contractor's quote to the agency, but only for the actual costs to the contractor. Contractor shall provide written documentation of such costs to the agency, upon request.

c. Prior to issuing an order for consulting services, the agency reserves the right to interview each individual proposed in the contractor's quote. If it is determined in the agency's sole judgment, that an individual lacks sufficient knowledge or experience to perform the requested tasks, the agency has the right of refusal, at which time a suitable replacement will be identified by the contractor within five calendar days, unless the agency and the contractor agree to a longer timeframe. The agency requesting the quote will decide if telephone interviews are acceptable. Any travel costs associated with interviews will be negotiated between the contractor and the agency. Contractor employees and/or subcontractors shall gain all security clearances required by an agency prior to starting work.

d. Background checks of contractor employees and/or subcontractors may be conducted at the discretion of the agency after the contractor identifies those persons who will be working on a project. The background checks will be paid for by the agency. If it is determined in the agency's sole judgment, that an individual is not suitable due to the results of a background check, the agency has right of refusal for that individual.

e. The agency will review the quote and make the order determination based on if the quote, in its opinion, represents the best overall combination of quality, price, and various elements of required goods/services that in total are optimal relative to the agency's needs. **While DPS has completed due diligence to the best of its ability during the RFP evaluation process, the using agency is solely responsible for taking the necessary steps to ensure due diligence has been met in regards to obtaining the most appropriate service provider and verifying personnel qualifications necessary to perform the specific task assigned.** Agencies must document their award rationale. DPS also recommends agencies and other public bodies perform a price reasonableness determination prior to issuing purchase orders over $5,000.00, and place this determination in your procurement file.

f. The contractor shall provide a copy of their insurance certificate to the agency, if requested, within five (5) business days. The agency reserves the right to make more than one award from a single scope of work. It's recommended that one contractor be awarded per scope of work. If a scope of work covers more than one consulting category, the agency should consider developing their own solicitation and not using this contract. If more than one consulting category is involved in a scope of work, the agency may get quotes from contractors in different consulting categories, but must anticipate and be prepared to deal with how to resolve coordination issues with having two or more contractors working on the same project.

g. Orders must be placed by the agency with the contractor through the eVA procurement system. All costs to the agency for deliverables and other charges must be identified in the order, along with the order state and completion dates. The contractor shall complete each project within the agreed cost and by the agreed completion date, unless a written change notice to the order is issued by the agency. **Agencies are required to notify the Department of General Services, Division of Purchases and Supply, when an order is placed under this contract. Email order notification to matt.manion@dgs.virginia.gov .**

h. Every order must name an Agency Contact, who shall be the main agency point of contact for the contractor for all issues related to the services performed under order. The Agency Contact is the only person authorized to make or approve any changes in the requirements of an order. In the event the contractor(s) makes any changes at the direction of any person other than the Agency Contact, the change will be considered to have been without authority and no adjustment will be made in the order to cover any increase in costs occurred as a result thereof. The Agency Contact is a single point of contact for the contractor for the order, and has the authority to obtain decisions on behalf of the agency.

i. If an individual provided by the contractor is unable to perform at an acceptable level within a reasonable length of time, as determined by the agency's sole judgment, the agency shall have the right to terminate that individual's services. If it can be shown that an individual did not make productive use of his/her time or adequately document his/her time, the agency may, at its sole option, refuse payment for hours billed against that individual.

j. APPROVAL OF CONTRACTOR/SUBCONTRACTOR PERSONNEL: Personnel commitments identified in the Contractor's quote to the requesting state agency or other public body shall be considered mandatory to the work performed under the resulting contract. Staffing must include those individuals proposed. With the exception of death or the removal of personnel who have permanently terminated employment or who become unavailable due to an extended illness, no changes to personnel will be made by the Contractor or the Contractor's Subcontractors without the prior written consent of the requesting state agency or other public body. Replacement of any personnel, if approved, shall be with personnel of equal ability, experience and qualifications.

   The Contractor's key personnel shall not be diverted from the project without prior written consent of the requesting state agency or other public body. Key personnel are those individuals who are determined by the requesting state agency or other public body to be central to the management of the project and to the project's development/implementation. Changes or diversion of Contractor key personnel without prior written consent of the requesting state agency or other public body will be sufficient grounds for termination of the contract for default.

   If personnel are lost because of death, termination or extended illness, the Contractor will replace them within ten (10) working days, including pre-approval

of the replacement. The requesting state agency or other public body may approve up to a ten (10) day working day extension for replacement of these personnel if the Contractor submits a written request for an extension of time. The Contractor shall include in the required status reports its efforts and progress in finding replacements and the effect of the absence on the progress of the project. In addition, the Contractor shall make interim arrangements to assure that the project's progress is not adversely affected by the loss of the personnel.

2. Pricing: See attached *Pricing and Quote Workbook* for contract pricing for each Contractor, including hourly prices, discounts and Best Value incentives. All quotes from contractors to state agencies and other public bodies must not exceed contract pricing.

3. Agency Policies: Contractor personnel will be expected to follow established agency directives and policies during the performance of assigned tasks.

4. Licensing: Offeror's quote to the state agency or other public body certifies that his or her firm is properly licensed for providing the goods/services specified.

5. Contract Manager: The contractor shall assign a Contract Manager to interface with the Commonwealth of Virginia Department of General Services, Division of Purchases and Supplies, for the contract that results from this solicitation. The Contract Manager shall coordinate and resolve issues relating to all orders placed with the contractor by individual agencies.

6. Contractor's Personnel: Contractor's personnel, including subcontractors, shall adhere to the same professional and ethical standards of conduct required of State personnel. Contractor personnel shall not:
    a. Discuss with unauthorized persons any information obtained in the performance of work under any order not considered a public record;
    b. Conduct business not directly related to the order on agency premises;
    c. Use computer systems and/or other agency facilities for company or personal business other than work related to the order; or
    d. Recruit on agency premises or otherwise act to disrupt official agency business.

8. Communications: Contractor personnel shall not hold themselves out to be representatives, in any capacity, of the agency. In all communications with third parties, contractor personnel shall identify themselves as such and specify the name of the contractor.

9. Contractor Responsibilities: In accepting an order, the contractor recognizes its responsibility for all tasks and deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks and deliverables and agrees to be fully accountable for the performance thereof. In addition, the contractor assumes full responsibility for the acts of all subcontractors.

The contractor shall provide all management, administrative, clerical, and supervisory functions required for the effective and efficient performance of all orders it accepts, and shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like for its personnel and any subcontractors. The contractor is accountable to the agency for the actions of its personnel.

Contractor's management responsibilities include, but are not limited to, the following:

a. Ensure personnel understand the work to be performed on orders to which they are assigned.
b. Ensure personnel know their management chain and adhere to contractor policies and exhibit professional conduct to perform in the best interest of the agency.
c. Ensure personnel adhere to applicable laws, regulations, and contract conditions governing contractor performance and relationships with the agency.
d. Regularly assess personnel performance and provide feedback to improve overall task performance.
e. Ensure high quality results are achieved through task performance.

10. Treatment of Customer Assets: Title to all property furnished by the agency under this contract or any order shall remain in the agency, and contractor shall surrender to the agency all property of the agency prior to settlement upon completion, termination, or cancellation of any order. Any property of the agency furnished to the contractor shall, unless otherwise provided herein or approved by the agency, be used only for the performance of the services for the agency.

11. Order Termination: The agency reserves the right to terminate an order at any time. Upon the termination of any order or a portion thereof, the agency may require the contractor to deliver to the agency any deliverables specifically produced or acquired for the performance of such part of any order. Agency shall pay the contractor for deliverables received and accepted by the agency, however, in no event shall the agency pay to the contractor an amount greater than the contractor would have been entitled to if the order were not terminated.

After receipt of a notice of termination, and except as otherwise directed by the agency, the contractor shall stop performing services on the date, and to the extent specified, in the notice.

The contractor shall accept no further orders for additional or other services related to the affected order, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and/or subcontracts related to the terminated order and settle all outstanding liabilities and all claims arising out of such termination of orders and/or

subcontracts, with the approval or ratification of the agency to the extent required, which approval or ratification shall be final for the purpose of this section.

The parties shall also settle any transfers of property which may have been required to be furnished to agency or which otherwise belongs to the agency; and contractor shall provide written certification to the agency that the contractor has surrendered to the agency all said property.

The termination of an order shall not affect the performance or quality of any other unrelated order being performed by the contractor for the same agency or any other agency.

TERMS AND CONDITIONS SUMMARY

(RFP and negotiation documents contain complete terms and conditions)

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

2. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

3. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

4. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

5. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency that placed the scope of work order with the contractor. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency that placed the scope of work order the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

6. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

7. **eVA Business-To-Government Contracts and Orders:** See 07/01/2011 revision at the end of this document.

8. **OWNERSHIP OF PROPERTY:** Any equipment, reference materials and other items purchased specifically for an agency's order, using an agency's funds, will belong to the Commonwealth at the conclusion of the order and delivered to the agency placing the order.

9. **OWNERSHIP OF DOCUMENTS**: All documents, which for purposes of this contract is defined to include but not be limited to reports, plans, subject data ("subject data" is defined as all information, excluding copyrighted material, that is compiled or delivered or specified to be compiled or delivered under this contract), drawings, studies, specifications, memoranda, estimates and computations secured by and for the contractor in the prosecution of this contract shall become and remain the property of the agency placing the order upon termination or completion of the work.

   The agency placing the order shall have the right to use such documents (preferably including copyrighted material) for any public purpose without compensation to the contractor, other than as hereinafter provided. Except for its own internal use, the contractor shall not publish or reproduce documents, in whole or in part, in any manner or form, nor shall the contractor authorize others to do so without the written consent of the agency. The agency reserves the right to publish initially all documents. The contractor shall not release or publish any documents without the prior written approval of the agency. Neither the contractor, nor any subcontractor or any agents, employees or subcontractors thereof, shall publish, participate in the publication of, or make oral presentations regarding any documents, information or material relating to this contract, either during or after the term of this contract, without specific prior written approval of the agency. Any releases to the news media must be approved by and released through the agency.

10. **INTELLECTUAL PROPERTY RIGHTS:** All rights in intellectual property specifically developed or created pursuant to this contract shall be the sole property of the agency placing the order with the Contractor. "Intellectual property" includes all inventions subject to the U.S. Patent System (including but not limited to new processes, materials, compounds, and chemicals), and all creations subject to the U.S. Copyright Act of 1976 (including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases).

    All copyrightable material created pursuant to the contract shall be considered work made for hire and may be utilized exclusively by the agency. Neither party intends any copyrightable material created pursuant to this contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If the whole or any part of any such copyrightable material cannot be deemed work made for hire or deemed a joint work, the contractor agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to the agency and shall execute and deliver such further documents as the agency may reasonably request for the purpose of acknowledging or implementing such assignment.

    The contractor warrants that no individual, other than regular employees of the contractor or the agency working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this contract unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the agency. The agency shall have all rights, title and interest in or to any invention produced to practice pursuant to this contract. The contractor shall not patent any invention conceived in the course of performing this contract.

    The contractor hereby agrees that, notwithstanding anything else in this contract, in the event of any breach of this contract by the agency, the remedies of the contractor shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no termination of this contract by the agency shall have the effect of rescinding the provisions of this section.

11. **CONFIDENTIALITY:** The contractor assures that information and data obtained during the performance of this contract, to include personal facts and circumstances related to patients or clients, shall be considered confidential, during and following the term of this contract, and will not be divulged without the agency's written consent and then only in strict accordance with prevailing laws. The contractor shall hold all information provided by the agency as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material. Upon termination of this agreement and/or within 30 days of receipt of final payment for services, all materials, data and information in the possession of the contractor, provided to or obtained by the contractor during he performance of this contract and to satisfy the requirements of this contract, shall be provided to the agency in hardcopy and/or electronic form. Except where law allows, the contractor shall not retain hard copies of the material, data and information and all electronic stored

material, data and information shall be expunged from equipment and systems retained by the contractor, unless otherwise agreed to in writing by the agency.

The Contractor acknowledges and understands that its employees may have access to confidential information, including Protected Health Information (PHI) regarding employees, clients/patients, or the public. In addition, the Contractor acknowledges and understands that its employees may have access to proprietary or other confidential information or business information belonging to the Commonwealth. Therefore, except as required by law, the Contractor agrees that its employees will not:

a. Access or attempt to access data that is unrelated to their job duties or authorization;
b. Access or attempt to access Protected Health Information (PHI) beyond their stated authorized HIPAA access level;
c. Disclose to any other person or allow any other person access to any information related to the Commonwealth, or any of its facilities that is proprietary or confidential and/or pertains to employees, students, patients, or the public. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.
d. Disclose Protected Health Information (PHI) in violation of HIPAA regulations.

The contractor understands that the Commonwealth and its employees, clients/patients, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the Commonwealth may seek legal remedies available to it should such disclosure occur. Further, the contractor understands that violations of this clause may result in contract default.

12. **BACKGROUND CHECKS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder or Offeror to perform the contract. **Such investigations may include but are not limited to fingerprint-based criminal history background checks, credit checks, legal residence checks, or proof of US citizenship.** The Bidder or Offeror shall furnish to Commonwealth all such information and data for this purpose as may be requested. The Commonwealth further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder or Offeror fails to satisfy the Commonwealth that such Bidder or Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the services contemplated therein.

13. **ADDITIONAL INSURANCE:** Depending on the specific consulting project requirements initiated by an agency, contractors may be required to provide insurance in addition to the insurance requirements found in the General Terms and Conditions section of this solicitation. Contractors will be notified of any additional insurance requirements in the agency's scope of work.

14. **DATA THEFT**: The Contractor assures that any and all personal information and data obtained as a result of performing contractual duties associated with this contract shall be held in strict confidence. Such information shall not be divulged without written permission from the individual and this Agency.

    1. All personal information whether electronic or hard copy shall be stored in a manner that will prevent intrusion and theft by unauthorized persons.

    2. All intrusions or suspicions of intrusion into files containing personal information shall be reported to the Agency and proper authorities within 24 hours of detection or suspicion.

    3. All remedies suggested by the Contractor shall be approved by the Agency prior to being implemented.

    4. Data thefts occurring due to Contractor errors, omissions, or oversights are the financial responsibility of the Contractor. This responsibility includes the cost of remedy.

15. **ADDITIONAL CONSULTANT SERVICES CATEGORIES:** Consultant services categories may be added to the contract by the Commonwealth after contract award. The Commonwealth may add or delete contractors during the contract.

16. **Mandatory Acceptance of Small Purchase Charge Card:** See updated term and condition below.

17. **INSURANCE**: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

    MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS: 1)Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. 2). Employer's Liability - $100,000. 3) Commercial General Liability - $1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The

Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy

18. **PAYMENT**: To Prime Contractor: a.) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations). b.) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. c.) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed. d.) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act. e.) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed.

    In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363). 2. To Subcontractors: a.) A contractor awarded a contract under this solicitation is hereby obligated: (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. b.) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth. 3.) Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial

shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Updated terms and conditions effective 8/14/2012:

eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract will result in multiple purchase orders with the eVA transaction fee specified below assessed for each order.

a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.
b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 1%, Capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at $1,500 per order.
c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 0.75%, Capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at $1,500 per order.
d. For orders issued July 1, 2013, and after, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 1%, Capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at $1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes. The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. Vendors desiring to provide goods and/or services to the

Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

a. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
b. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.
b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 1%, capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at $1,500 per order.
c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 0.75%, capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at $1,500 per order.
d. For orders issued July 1, 2013 and after, the Vendor Transaction Fee is:
   (i) DMBE-certified Small Businesses: 1%, capped at $500 per order.
   (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at $1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant toTitle 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) isstreamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

Mandatory Acceptance of Small Purchase Charge Card:

Purchasing charge cards offer State agencies and Institutions the opportunity to streamline their procedures for procuring and paying for small dollar goods and services. Vendors responding to this solicitation should note that acceptance of payment by purchase card is mandatory (unless waived by DPS) within 90 days of contract award. For current contracts where acceptance of the purchasing card is not in effect, Contractors must (unless waived by DPS) accept purchase card payments within 90 days of contract renewal.

Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. This can be accomplished by vendors establishing their card account at Level 2, which is mandatory or Level 3, which is optional. Information on the various levels for the Bank of America (BOA) Visa Purchasing Card is indicated below.

Charge Card Levels:

The amount of data passed for each charge card payment depends on the level at which the charge card is established. The levels are delineated below and the preferred level by the Commonwealth is level 2.

Level 1 vendors provide basic credit card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 vendors provide additional information to the Level 1 elements, including, but not limited to the data listed below. By passing level 2 detail, the vendor will receive lower

interchange costs. Level 2 is mandatory for any vendors who do business with the Commonwealth of Virginia and accept Bank of America (BOA) Visa Purchasing Card.

- Customer Code (PCO Number from eVA)
- Vendor Tax ID

Level 3 vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including, but not limited to the data listed below. By passing Level 3 (which is optional) data which is considered Superior data, the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

FINANCIAL WARRANTY: Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.