**COMMONWEALTH OF VIRGINIA**
# DIVISION OF PURCHASES AND SUPPLY
**PO BOX 1199**
**RICHMOND, VA 23218-1199**

# CONTRACT # E194-1251-VP

## Notice of Contract Award
## COV Zone 97 Only

| | | |
|---|---|---|
| 1. | DATE | April 28, 2011 |
| 2. | CONRACT TITLE | Bread, Rolls and Related Products |
| 3. | CONTRACT PERIOD | May 1, 2011 through April 30, 2012 |
| 4. | AUTHORIZED USERS | MANDATORY - State Agencies in Zone 97<br>OPTIONAL - Other public bodies |
| 5. | CONTRACTOR | Flowers Baking Co. of Norfolk, LLC |
| 6. | CONTRACTOR CONTACT | Mr. Mike Wesley, (757) 622-0347 |
| 7. | TERMS | Net 30 Days |
| 8. | DELIVERY | 2 Days ARO |
| 9. | MINIMUM ORDER | $50.00 |
| 10. | FOR FURTHER CONTRACT INFORMATION CONTACT: | Ashley E. Todd, VCO<br>ashley.todd@dgs.virginia.gov<br>(804) 786-3897 |

11. Additional copies of contracts may be viewed and printed at the DPS website: www.eva.virginia.gov

12. NOTE: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343, 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.

## Contractor Information

| | |
|---|---|
| Contractor | Flowers Baking Co. of Norfolk, LLC |
| Contractor Address | 1209 Corprew Ave.<br>Norfolk, VA 23504 |
| Contractor eVA ID Number | E1863 |
| Contractor Contact Name | Mr. Mike Wesley<br>(757) 622-0347<br>mike_wesley@flocorp.com |

## Contract Instructions

1. If this is a mandatory use contract as indicated on page one of this notice and the commodity or services available under this contract cannot be used by an agency, a request to purchase other goods or services of a similar nature shall be submitted to the appropriate DGS/DPS contract/purchase officer for approval. A complete and factual written justification is necessary to support the request. Refer to Section 13.7 of the *Agency Procurement and Surplus Property Manual*.

2. Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia shall order items listed by issuing orders through eVA.

3. If this contract is authorized for use by localities, Virginia cities, counties, towns and political subdivisions may use this contract if the orders are placed through eVA.

4. When placing an eVA non-catalog order, each line of the requisition must be identified with the contract item number, the contract item description and the contract number. The contract number should be inserted in the contract number field.

5. Inspection on delivery and approval of vendor's invoice is the responsibility of the receiving entity.

6. Any complaint as to quality, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported by the contract user directly to the contractor, with a copy provided to the Division of Purchases and Supply. Preprinted forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available from the Division of Purchases and Supply (804-786-4634). The electronic version may be downloaded from the internet at the following link: http://eva.virginia.gov/learn-about-eva/files/VendorComplaintForm.doc

## Additional Information

Nutritional information for each line item is available by contacting the DPS Contract Officer listed on Page 1 of this document.

## Commodity Information

**SKIP BELOW TO PAGE 4**

| Item No. | Item Description | Pack Size | Weight | Brand | Unit of Measure | Unit Price |
|---|---|---|---|---|---|---|
| | | | **Bread** | | | |
| 005 | Bread, White, Enriched, Regular Sliced | 20 slices | 16 oz. | Sunbeam | loaf | $ 0.85 |
| 010 | Bread, White, Enriched, Regular Sliced | 22 slices | 20 oz. | Sunbeam | loaf | $ 0.90 |
| 015 | Bread, White, Enriched, Sandwich Sliced | 24 slices | 20 oz. | Mary Jane | loaf | $ 0.90 |
| 020 | Bread, White, Enriched, Sandwich Sliced, DAY OLD | 24 slices | 20 oz. | Mary Jane | loaf | $ 0.80 |
| 025 | Bread, White, Enriched, Sandwich Sliced | 28 slices | 24 oz. | Sunbeam | loaf | $ 1.00 |
| 035 | Bread, Wheat, Enriched, Regular Sliced | 22 slices | 20 oz. | Nature's Own | loaf | $ 1.15 |
| 045 | Bread, 100% Whole Wheat, Enriched, Sandwich Sliced | 24 slices | 24 oz. | Roman Meal | loaf | $ 1.25 |
| 050 | Bread, Light Wheat, Sliced, 40 cal./slice | 20 slices | 16 oz. | Nature's Own | loaf | $ 1.50 |
| 055 | Bread, Honey Wheat, Enriched, Sandwich Sliced | 22 slices | 20 oz. | Nature's Own | loaf | $ 1.15 |

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|---|---|---|---|---|---|---|
| 065 | Bread, Rye, Enriched, Regular Sliced | 14 slices | 16 oz. | Cobblestone Mill | loaf | $ 2.00 |
| 070 | Bread, French, Enriched, Regular Sliced | 18 slices | 16 oz. | Cobblestone Mill | loaf | $ 2.00 |
| 075 | Bread, Raisin, Enriched, Regular Sliced | 16 slices | 16 oz. | Nature's Own | loaf | $ 2.10 |
| 080 | Bread, 100 % Whole Wheat | 22 slices | 20 oz. | Nature's Own | loaf | $ 1.15 |
| 090 | Texas Toast, White, Enriched, Sliced | 19 slices | 24 oz. | Flowers | loaf | $ 1.15 |
| **Rolls** | | | | | | |
| 100 | Rolls, Hamburger, 3 1/2" Diam. | 12/pk. | 20 oz. | Sunbeam | pkg | $ 1.00 |
| 105 | Rolls, Hamburger, Sesame Seeded, 3 1/2" Diam. | 12/pk. | 18 oz. | Flowers | pkg | $ 1.10 |
| 110 | Rolls, Hamburger, 5" Diam. | 20/tray | 58 oz. | Flowers | tray | $ 2.50 |
| 115 | Rolls, Hamburger, Whole Wheat, 3 1/2" Diam. | 8/pk. | 15 oz. | Nature's Own | pkg | $ 1.60 |
| 120 | Rolls, Hot Dog, Regular, 5 1/2" long | 12/pk. | 18 oz. | Sunbeam | pkg | $ 1.00 |
| 130 | Rolls, Hot Dog, 100% Whole Wheat, 5 1/2" long | 8/pk. | 13 oz. | Nature's Own | pkg | $ 1.60 |
| 135 | Rolls, Dinner, White, Ready to Serve | 24/pk. | 24 oz. | Sunbeam | pkg | $ 1.25 |
| 140 | Rolls, Dinner, Split Top | 16/pk. | 13 oz. | Sunbeam | pkg | $ 1.40 |
| 150 | Rolls, Brown and Serve, approx. 2" square | 12/pk. | 10 oz. | Sunbeam | pkg | $ 1.15 |
| 160 | Rolls, Onion | 8/pk. | 12 oz. | Cobblestone Mill | pkg | $ 2.20 |
| 165 | Rolls, Kaiser, sliced | 8/pk. | 18 oz. | Cobblestone Mill | pkg | $ 2.20 |

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|---|---|---|---|---|---|---|
| 170 | Rolls, Sub, White, Soft, Pre-Split, 7" | 6/pk. | 22 oz. | Flowers | pkg | $ 2.00 |
| 175 | Sub Bub, White, 6" | 6/pk. | 18 oz. | Cobblestone Mill | pkg | $ 2.20 |
| 176 | Seeded Philly Hoagie Roll, 6", sliced | 6/pk. | 15 oz. | Cobblestone Mill | pkg | $ 2.20 |
| 180 | Sub Bun, White, 8" hinged | 6/pk. | 24 oz. | Flowers | pkg | $ 2.10 |
| 185 | Sub Bun, Wheat, 6" | 6/pk. | 21 oz. | Cobblestone Mill | pkg | $ 2.20 |
| **Muffins, Donuts, Bagels and Other Pastries** | | | | | | |
| 190 | Muffins, English, Plain White, Fork Split, 3 1/2" Diam. | 6/pk. | 24 oz. | Nature's Own | pkg | $ 1.50 |
| 200 | Bagels, Plain White | 6/pk. | 12 oz. | Nature's Own | pkg | $ 1.70 |
| 205 | Bagels, Cinnamon Raisin | 6/pk. | 21 oz. | Nature's Own | pkg | $ 1.70 |
| 215 | Donuts, Assorted, 4ct/pk. | 6pk. | 11 oz. | Bluebird | pkg | $ 2.00 |
| 220 | Strawberry Shortcake Cups | 6ct. | 5 oz. | Bluebird | pkg | $ 1.34 |

## Special Terms and Conditions

**A. ADVERTISING**: In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to the Commonwealth of Virginia will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the Commonwealth has purchased or uses any of its products or services, and the Contractor shall not include the Commonwealth in any client list in advertising and promotional materials.

**B. 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.

**C. CANCELLATION OF CONTRACT:** The Commonwealth 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.

**D. CATALOGS**: Upon request, the contractor shall furnish product information for items awarded directly to using agencies.

**E. CONTRACTOR'S QUARTERLY REPORT OF SALES:** Contractors shall provide electronic reports in Microsoft Excel format on a quarterly basis showing invoiced sales data. See Attachment G for the report template, which identifies the information and format to be provided. Reports are due no later the 15th of the month following the end of each calendar year quarter, reporting total invoiced sales and returns transactions that took place in the immediate three prior months. **Quarterly reports shall be sent to the DPS Contract Officer AND to the following email address**: VappReport@dgs.virginia.gov. Consistent report tardiness may be cause for contract termination.

| | **Sales Months** | **Quarterly Report Due**: |
|---|---|---|
| 1st Quarter | January, February, March | Due 15th of April |
| 2nd Quarter | April, May, June | Due 15th of July |
| 3rd Quarter | July, August, September | Due 15th of October |
| 4th Quarter | October, November, December | Due 15th of January |

**F. DELIVERY POINT**: Except when otherwise specified herein, all items shall be F.O.B. Delivered to any point within the Commonwealth of Virginia as directed by the ordering department, institution or agency of the Commonwealth or Public bodies of the Commonwealth as defined in § 2.2-4301of the Virginia Public Procurement Act.

**G. eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in multiple purchase order(s) 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 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 eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

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.

**H. 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

**I. MINIMUM ORDERS:** The minimum order limit will be $50.00 for F.O.B. Delivered to ordering agency within the Commonwealth of Virginia. For orders of less than $50.00, the contractor will be permitted to add actual transportation cost (prepaid) to invoice for payment, or the agency may purchase such order off contract from other sources. Partial shipments of less than the minimum order value which are made at the option of the contractor shall be made F.O.B. Delivered with no transportation charges added. If at the agency's request shipments are below the minimum order value, the contractor may add actual transportation cost to invoice for payment.

**J. PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials and other market factors that may affect cost. The following items may be used as guides by the purchasing office in determining reasonableness: BLS Producer Price Index – Table 6 Commodity Series Id: 0211, Bakery Products (or successor indices), industry trade journals, contractor supplied cost documentation (such as supplier's invoices) and other pertinent data available in the public domain. Price increases will not be authorized for 365 days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 180 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.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation (see preceding paragraph) shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase being requested.

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 materials are required to be communicated immediately to the purchasing office.

**K. PRODUCT AVAILABILITY**: Substitution of a product, brand or manufacturer after award of contract is expressly prohibited unless approved in writing by the DPS Contract Officer. The Commonwealth may, at its discretion, require the contractor to provide a substitute item of equal quality, subject to the approval by the Commonwealth, for the same price, if the product for which the contract was awarded becomes unavailable to the contractor.

**L. RENEWAL OF CONTRACT**: This contract may be renewed by the Commonwealth upon written agreement of both parties for four (4) successive one-year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

**M. SPECIAL OR PROMOTIONAL DISCOUNTS**: The contractor shall extend any special promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**N. SURCHARGE ADJUSTMENT:** The contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this contract. The SCA fee reimburses the Commonwealth and defrays the costs for Spend Management procurements and the administration of the subsequent awards. The contractor must remit the SCA fee within 30 days after the end of each calendar year quarter. It is the intent of the Commonwealth to capture 2% of all invoiced transactions under the contract. The SCA fee equals two percent (2%) of the total invoiced sales as reported in the Contractor's quarterly reports for the previous calendar year quarter. The SCA fee amount due must be paid by check. The check stub or other remittance material must include "VAPP SCA fee", the contract number, and dates of the three-month reporting period. DGS may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates agreement, then the payment shall be made by check as described herein made payable to the Treasurer of Virginia.

Checks are to be payable to: **Treasurer of Virginia**.

Checks are to be mailed to:

Department of General Services
P.O. Box 267
Richmond, VA 23218-0267

**SCA FEES DUE**:

| | |
|---|---|
| 1st Quarter (sales reports Jan, Feb, March) | Due 30th of April |
| 2nd Quarter (sales reports Apr, May, June) | Due 30th of July |
| 3rd Quarter (sales reports July, Aug, Sept) | Due 30th of October |
| 4th Quarter (sales reports Oct, Nov, Dec) | Due 30th of January |

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of this contract.

# General Terms and Conditions

A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over $10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

I. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. 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. <u>To Subcontractors</u>:

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.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF BIDDERS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

   a. By mutual agreement between the parties in writing; or

   b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.

S. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

T. **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.

   (**Note to Agency/Institution**: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and coverage are not warranted for the goods and services being procured, the Division of Risk Management should be contacted.

4. Automobile Liability - $1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over $50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS**: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **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 e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

a. eVA Basic Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. 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: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. 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.

c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.

d. For orders issued August 16, 2006 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 eVA transaction fee will be invoiced 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.

Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Z. **SET-ASIDES**. This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders shall state bid prices in US dollars.

BB. **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.