

COMMONWEALTH OF VIRGINIA

STANDARD CONTRACT

Contract Number: E194-1269

This contract entered into this 1<sup>st</sup> day of February 1 2012 by EnergyConnect, Inc hereinafter called the "Contractor" and Commonwealth of Virginia Department of General Services and the Division of Purchases & Supply called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Agencies of the Commonwealth of Virginia as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From: February 1, 2012 through January 31, 2015

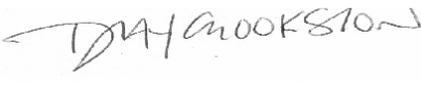
The contract documents shall consist of:

- (1) This signed form; and your proposal dated November 2, 2011.
- (2) The attached purchasing description, which consists of:
  - (a) The Scope of Work, and/or item description, with EnergyConnect's proposed and submitted offer highlighted in red, where appropriate, for purposes of clarification
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions all of which documents are incorporated herein.
  - (d) E194-112-1 and Attachments 1 through Attachment 8
  - (f) 26 Participating Accounts listed in Attachment A

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR: EnergyConnect, Inc,

PURCHASING AGENCY:

By: 

By: 

Title: Director, US Sales and Support

Title: Contract Service Officer, VCO

**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.**



**COMMONWEALTH OF VIRGINIA**  
DEPARTMENT OF GENERAL SERVICES  
DIVISION OF PURCHASES & SUPPLY  
1111 East Broad Street, Richmond, Virginia 23219  
January 27, 2012

**NOTICE OF CONTRACT**

CONTRACT #E194-1378

**Title: Curtailment Service Provider (NIGP Code 91841)**  
**Contract Period: February 1, 2012 through January 31, 2015**

**Authorized User:** See Attachment "A"

**CONTRACTOR INFORMATION**

**EnergyConnect, Inc**  
**901 Campisi Way Suite 200**  
**Campbell, CA 95008**

**eVA ID: VS0000022336**

**Contact Name: George Barnes**

**Phone: 804 221 2800**

**Fax: (866) 792-1334**

**Email: [George.barnes@JCI.com](mailto:George.barnes@JCI.com)**

**VIEW AND PRINT THIS CONTRACT AND ANY CHANGES AT: [www.eva.virginia.gov](http://www.eva.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 because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Sandra D. White, VCO  
Statewide Service Contract Officer  
Telephone: (804) 786-0078  
Fax: (804) 786-5413  
Email: [sandra.white@dgs.virginia.gov](mailto:sandra.white@dgs.virginia.gov)

## ORDERING INSTRUCTIONS

1. Orders:

A. For this procurement all departments, institutions and agencies of the Commonwealth of Virginia are exempt from the eVA procurement system.

B. For procurement instructions contact DMME at 804-382-4217.

2. The applicable contract number, federal employer identification number (FEI), or eVA number, and item number (for itemized contracts) must be shown on each purchase order and copy, each facsimile transmission or given verbally when telephonic orders are placed.

3. Any complaint as to quality, faculty or delinquent delivery, or violation of contract provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor Form (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, is available from the Division of Purchases and Supply web site at [www.eva.state.va.us](http://www.eva.state.va.us).

4. Renewals: This contract has three (3) optional one-year renewal period remaining. The contract will be resolicited by the Commonwealth at a reasonable time (approximately 120 days) prior to the expiration.

5. Both the contracting entity and the Contractor must agree upon accounts to be added to the program. The Department of Mines, Minerals and Energy (DMME) will act as an independent evaluator when needed.

6. At the termination of this contract any balances owed to the Contractor for monitoring equipment or other services provided under this contract are forgiven and the balances reduced to zero by deducting any such remaining balances from remaining unpaid earnings.

7. Any entity may pay for metering equipment or services upon receipt of an invoice from the Contractor instead of deducting the cost for these items from the demand response payment.

8. Electrical work, other than monitoring equipment, required by an account to participate, this program must be contracted for outside of this agreement.

9. EnergyConnect will provide GridConnect Contract Documents to each individual Qualified Participant for review. Each GridConnect Contract Document will be signed by a designated DMME representative certifying the Qualified Participants 3 Year Commitment and resulting earnings.

**Price Schedule**  
**Contract # E194-1378**  
**Effective February 1, 2012 through January 31, 2015**

15% Commonwealth of Virginia Savings + 85% Vendor Fee  
Page 26 of Proposal:

Demand Response Services:

85% Commonwealth of Virginia Savings + 15% Vendor fee/Commission = 100% Total Savings, plus a monthly Program fee (deducted from Program earnings) of \$200/location.

The Curtailment Service Provider under Demand Response is intended to offer an economic incentive to achieve electric demand reduction to the Commonwealth of Virginia.

The percentages allocated to savings and fee/commission as well as any other aspect of the price of the services shall remain constant during the contract period and percentages shall remain constant during all renewal periods.

## **SCOPE OF WORKS**

A. Detail Duties and Service Requirements:

1. Provide timely, detailed accounting of all demand response transactions to the Commonwealth Agencies, Institutions of Higher Education or Public Bodies, Director of Utilities or appointed representative.
2. Design a process to generate consistent revenues without exposing Commonwealth Agencies, Institutions of Higher Education or Public Bodies to undue risk.
3. Provide access to all applicable PJM CSP programs.
4. Provide mechanisms that allow Commonwealth Agencies, Institutions of Higher Education or Public Bodies to initiate demand response transactions on either a full-service or self-service basis.
5. Maintain constant dialog with the appointed, at each Commonwealth Agencies, Institutions of Higher Education or Public Bodies participating in the program, representative that assures the success of the program.
6. Provide immediate communication and reconciliation of any issues of concern.
7. Ensure the work performed is completed so as to not adversely affect daily operations Commonwealth Agencies, Institutions of Higher Education or Public Bodies facility utilities remain in working order at all times, unless otherwise approved by the facility representative.
8. Notify, and receive approval from the appropriate Director of Utilities prior to blocking off or closing down any portion of buildings, grounds, or surrounding streets or alleyways.

B. Payment Processing Services: The Offeror shall provide payment processing services for all savings from demand response transactions. Ensure payment of agreed upon % of savings within 30 days of the first of the month directly after the date of the transaction. Example: transaction March 15<sup>th</sup>. Check should be received no later than 30 days from April 1<sup>st</sup> (April 30<sup>th</sup>).

Page 8 of Proposal:

EnergyConnect will provide payment processing services for the Commonwealth of Virginia for all demand response transactions from PJM to ensure timely payments to the Commonwealth of Virginia according to the agreed upon % savings. The payment processing services will include appropriate detailed transaction accounting.

Payment will be made within 30 days of the first of the month directly after the date of receipt of payment from PJM.

C. Services Interruption and Security: The Offeror shall provide all the labor, equipment, supplies and material for collecting energy consumption and demand data from the Building Automation System (BAS), or electric utility, analyzing data, and providing services on behalf of the Commonwealth's specified time limits to assure the performance of work in accordance with the terms of the RFP. The proposal will outline the tasks and responsibilities of the Offeror, the Commonwealth Agencies, Institutions of Higher Education and Public Bodies.

1. Data collection shall not interfere with the operation of the Building Automation System (BAS) or the ongoing collection of BAS data for other purposes.
2. Data collection devices shall be protected so that power interruption will not cause data loss.
3. Security protocols or hardware shall be provided to prevent hacking into the BAS from data collection devices or interconnections.
4. Failure of any data collection device shall not interfere or cause failure or shutdown of the BAS or connected systems.

## **GENERAL TERMS AND CONDITIONS:**

**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](http://www.eva.virginia.gov) under "Vendors Manual" on the "Vendor" tab.

### **B. APP. LAWS AND COURTS**

**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:**

**ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) 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**

**ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), 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**

**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**

**DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) 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**

**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**

**MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFB's:** 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**

**CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) 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.

#### **K. PRECEDENCE OF TERMS**

**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**

**QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) 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/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) 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**

**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**

**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**

**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**

**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**

USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) 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/offeror) 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/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

## **S. TRANSPORTATION AND PACKAGING**

TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offerors) 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 (1 of 3)**

INSURANCE (part 1 of 3): 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. (continued in part 2)

## **T. INSURANCE (2 of 3)**

INSURANCE (part 2 of 3) 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 4).Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.). (continued in part 3)

#### **T. INSURANCE (3 of 3)**

INSURANCE (part 3 of 3): NOTE: In addition, various Professional Liability/Errors and Omissions coverage are required when soliciting those services as follows: Profession/Service /Limits, Accounting /\$1,000,000 per occurrence, \$3,000,000 aggregate Architecture/\$2,000,000 per occurrence, \$6,000,000 aggregate, Asbestos Design, Inspection or Abatement Contractors/ \$1,000,000 per occurrence, \$3,000,000 aggregate, Health Care Practitioner (to include Dentists, Licensed Dental, Hygienists, Optometrists, Registered or Licensed, Practical Nurses, Pharmacists Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical ,Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.) \$1,750,000 per occurrence, \$3,000,000 aggregate, (Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2005 - \$1,800,000, July 1, 2006 - \$1,850,000, July 1, 2007 - \$1,925,000, July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia. Insurance/Risk Management /\$1,000,000 per occurrence, \$3,000,000 aggregate, Landscape/Architecture/\$1,000,000 per occurrence, \$1,000,000 aggregate, Legal/\$1,000,000 per occurrence, \$5,000,000 aggregate. Professional Engineer/\$2,000,000 per occurrence, \$6,000,000 aggregate, Surveying/\$1,000,000 per occurrence, \$1,000,000 aggregate

#### **U. ANNOUNCEMENT OF AWARD**

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 website ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

#### **V. DRUG-FREE WORKPLACE**

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**

**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.

#### **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.

#### **J. PAYMENT (1 of 4)**

**PAYMENT (part 1 of 4):** 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.(Continued on part 2)

#### **J. PAYMENT (2 of 4)**

PAYMENT (part 2 of 4): 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. (continued on part 3)

#### **J. PAYMENT (3 of 4)**

PAYMENT (part 3 of 4): 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.

## **J. PAYMENT (4 of 4)**

PAYMENT (part 4 of 4): The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

### **AA. BID PRICE CURRENCY:**

BID PRICE CURRENCY: Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

### **BB. BUSINESS AUTHORIZATION**

**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.

## **SPECIAL TERMS AND CONDITIONS ADDED:**

**A. ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the Commonwealth 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. ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

**D. 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.

**E. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

1. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

**F. 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.

**G. RENEWAL OF CONTRACT/PRICE ADJUSTMENTS:** The contract will have an initial contract period of three (3) years. The contract may be renewed by the Commonwealth for three (3)

successive two-year periods under the terms and conditions of the original contract except as stated below. Written notice of the Commonwealth's intention to renew will be given approximately 90 days prior to the expiration date of each contract period.

**H. CONTRACTUAL DISPUTES:** In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of General Services, its officers, agents and employees, including, without limitation, the Contracting Officer, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

#### I. eVA Business-To-Government Contracts and Orders:

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](http://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](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

**J. CONTRACTOR ACCESS TO COMMONWEALTH LOCATIONS:** The Commonwealth shall grant to Contractor personnel such access to the Commonwealth locations as may be necessary or appropriate for

Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security

procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth, or the Authorized User submitting an Order under this Agreement, would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

**K. CONTRACTOR'S REPORT OF SALES:** Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all invoiced sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of an invoiced sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. Contractor shall provide this report to the DGS Office of Fleet Management Services via email to OFMS@dgs.virginia.gov, or other designated office, with a copy of the report sent to the DGS Contracting Officer, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser, and other details as may be requested by the Commonwealth. The report is required to be in electronic MS Excel spreadsheet format (.xls). The Contractor shall provide other reports pertaining to the contract as may be required by the Commonwealth.

**L. CONTINUITY OF SERVICES:** The Contractor recognizes that the services under this contract are vital to the agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees: 1. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

2. To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and 3. That the Agency Contract Administrator shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

**M. ADVANCEMENTS:** The Commonwealth reserves the right to modify any contract that results from this solicitation to allow for progressive growth, knowledge, and advancements and/or any Federal, State or Local changes to bulk and commercial motor fuel/fuel card specifications, requirements, and/or regulations as specified. For any such modifications, contract pricing formula shall remain the same in calculating contract rates, unless an alternate formula is mutually agreed to by the Commonwealth and the contractor.

**N. REGULATIONS:** The contractor shall be responsible for complying with all federal, state, and local environmental and other regulations relating to curtailment services.