

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
1111 E. BROAD STREET, 6th Floor
P. O. BOX 1199
RICHMOND, VIRGINIA 23218-1199

NOTICE OF CONTRACT AWARD

- 1. DATE: March 2, 2012
- 2. COMMODITY NAME AND NUMBERWriting Instruments, Components,
.....Parts and other Supplies / 62081
- 3. CONTRACT NUMBER..... **E194-1381** and **E194-1382** (see Page 2)
- 4. CONTRACT PERIOD March 2, 2012 through March 1, 2014
- 5. SUPERSEDES n/a
- 6. AUTHORIZED USERS **Virginia Industries f/t Blind** (see pg.2)
- 7. CONTRACTOR(S) eVA ID NUMBER See Attached
- 8. CONTRACTOR..... See Attached
- 9. CONTRACTOR(S) PHONE NUMBER See Attached
- 10. TERMSNet 30 Days
- 11. DELIVERY7 Working Days ARO
- 12. F.O.B.:Destination, Freight Included for orders over \$100.00
- 13. MINIMUM ORDER \$100.00 (except as noted on page 5)
- 14. FOR FURTHER CONTRACT INFORMATION CONTACT: Kim Hatala
Telephone: (804) 786-3849
E-mail: kim.hatala@dgs.virginia.gov

ADDITIONAL COPIES OF CONTRACTS AND ANY ASSOCIATED CONTRACT CHANGES MAY BE VIEWED AND PRINTED AT THE DPS WEBSITE: www.eva.virginia.gov

NOTICE TO ALL STATE AGENCIES: This Single-Agency Contract is the result of a competitive bid program and is available for use only by DBVI/Virginia Industries for the Blind.

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.

VENDOR ORDER ADDRESS LISTINGS

CONTRACT #	eVA ID #	VENDOR INFORMATION
E194-1381	E13605	<p><u>Name:</u> AFP Industries, Inc. <u>Address:</u> P.O. Box 43-0747 South Miami, FL 33243-0747</p> <p><u>Contact:</u> Vivian Castellanos <u>Phone:</u> 800-962-4041 <u>Fax:</u> 305-665-1800 <u>Email:</u> AFPIND@aol.com <u>Website:</u> www.afpschoolsupply.com</p>
E194-1382	C23397	<p><u>Name:</u> Pyramid School Products <u>Address:</u> 6510 North 54th Street Tampa, FL 33610-1908</p> <p><u>Contact:</u> Larry Miller, President <u>Phone:</u> 813-621-6446 or 800-792-2644 x240 <u>Fax:</u> 813-621-7688 <u>Email:</u> bids@pyramidsp.com <u>Website:</u> www.pyramidsp.com</p>

AUTHORIZED USER INFORMATION

Ship to: Virginia Industries for the Blind – Richmond
 1535 High Street
 Richmond, VA 23220

Bill To: Virginia Industries for the Blind - Charlottesville
 1102 Monticello Road
 Charlottesville, VA 22902

PURCHASE INSTRUCTIONS

(Also see section: *Specifications/Scope of Work AND Terms and Conditions*)

1. Purchase orders: To the maximum extent possible, purchase orders shall be submitted to the contractor via the Commonwealth of Virginia's electronic procurement system, also known as eVA. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor.
2. The applicable contract number, federal employer identification number (FEI), 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. Inspection on delivery and approval of vendor's invoice is the responsibility of the receiving state agency.
4. Any complaint as to quality, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor. Form "Complaint to State Vendor" (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 website eVA website www.eva.virginia.gov (Click on the Buyer Tab then click on Procurement Complaint Form located under the Buyer Quick Links.)
5. **Renewals**: Three (3) optional renewal periods remain. Refer to the Renewal Clause for additional information.
6. Price Adjustments. Any changes whether for increases or decreases in pricing, delivery terms or additional options must be approved by the Division of Purchases and Supply in advance of issuance of the purchase order. Disputes between the ordering agency and the vendor will be resolved in accordance with the terms of the contract and any change orders/renewals unless prior approval was granted by DPS. (See the Price Escalation/De-Escalation Clause)
7. FOB DESTINATION: All items shall be F.O.B. delivered to any point within the Commonwealth of Virginia as directed by any ordering department, institution or agency for all orders over \$100.00. Prices shall include all freight and delivery charges. No extra charges developed.
8. VERIFICATION: The Commonwealth reserves the right to verify all items and to reject any shipment which exceeds a failure rate greater than 10% of the total number of items in that shipment. All such rejected shipments are subject to the replacement provisions of the DEFECTIVE MATERIALS clause.
9. DEFECTIVE MATERIAL: Contractors shall provide replacement delivery service for defective material anywhere within the Commonwealth of Virginia within 72 hours (24 hours for emergency orders) of verbal or written notice. All such replacement shipments will be limited to the actual number of defective materials received. All necessary shipping and other associated costs shall be born by the Contractor. Failure to replace such defective materials within the specified timeframes with correct material may be cause for the Commonwealth to declare the Contractor in default per Paragraph 7.14 of the Commonwealth of Virginia Vendor's Manual.

SPECIFICATIONS / SCOPE OF WORK

- 4.1 **General:** The specifications contained herein and in all other IFB attachments describe and define the minimum level of quality and performance of the requested products, and are meant to be met or exceeded. All dimensions provided are minimums, unless otherwise specified in this solicitation.
- 4.2 **Proprietary Specifications - Lots 1 through 17** are designated as a Proprietary Bid and only the exact Brand Names and Model/Part Numbers listed will be considered. General Term and Condition titled “Use of Brand Names” does not apply. Alternates will not be considered.
- 4.3 **Brand Name or Equal Specifications – Lots 18 through 27** are designated as Brand Name or Equal, whereas products that meet or exceed the specifications will be considered. General Term and Condition titled “Use of Brand Names” will apply. The Bidder must provide all requested information where indicated, and as instructed. The Bidder must provide the manufacturer Name and Part/Order # of the item being bid for Lots 18 through 27. The Commonwealth reserves the right to solely evaluate all bids and to make all determinations.
- 4.4 **Product Information:** Bidders shall submit complete technical data of all product(s) being offered with their bid that clearly documents equivalence with the product specification(s). The Bidder may submit any necessary additional information, explanations, etc. The Commonwealth reserves the right to obtain request additional technical data, product samples and to request clarification when deemed necessary. Please note that all bids received that conflict with, or take exceptions to, the mandatory Terms or requirements of this solicitation will not be considered. Failure on the part of the bidder to provide all requested documentation and/or fail to provide any information as instructed, may be cause to deem the bid non-responsive.
- 4.5 **Units of Measure:** The Bidder may not change any unit of measure listed nor provide an alternate BID PRICE for a different unit of measure. If any item is not available from the Manufacturer in the unit of measure indicated below, the bidder must calculate and provide a firm BID PRICE for the U/M indicated in this solicitation.
- 4.6 **Estimated Annual Order Quantities** listed in this solicitation are based on historical annual purchasing data, however, these estimates are for evaluation purposes only and are not guaranteed.
- 4.7 **Bid Pricing:**
- a) The preferred method of submitting a response to this solicitation is electronically through eVA, including all bid pricing and other information requested on Attachment B- Pricing Schedule.
 - b) For bidders who wish to submit a Paper Response, **Attachment B – Pricing Schedule** must be submitted complete, with your bid. This attachment is provided in Excel and should be saved to your computer prior to opening or completing it. The file contains formulas to automatically calculate Extended and Grand Totals, according to your Unit Price bid.
 - c) The Bidder is responsible for verifying that all unit, extended and grand total bid pricing is correct, prior to submitting their bid.
 - d) Bidders responding electronically through eVA, whereas all pricing and product information is entered correctly and completely in eVA, are not required to complete Attachment B – Pricing Schedule, as long as your eVA electronic submission contains all information requested in the attachment.
 - e) Bidders are not required to bid on all Lots, however, bidders must bid on all Line Items within a Lot to be considered for an award.
- 4.8 **Bid Samples:** Upon request from DGS/DPS, the bidder(s) shall submit bid samples for each product

offered within 10 calendar days. Failure on the part of the bidder to provide such samples within the specified time frame or to comply with these instructions may be cause to consider the bid as non-responsive. Bid samples shall be an exact and true representative sample of the actual material offered. Each bid sample shall be properly tagged or labeled with the name of the bidder and manufacturer, the bid opening date, the solicitation number and the specific commodity or item number. Bid samples shall be provided at no additional costs to the Commonwealth. Bid samples will be handled and disposed of in accordance with paragraph 5.8 of the Vendor's Manual. Furthermore, the Division reserves the right to secure additional check samples from the actual material supplied. In the event the check samples fail to conform to the contract requirements, the contractor shall immediately replace the portion of the delivered commodity with acceptable material conforming to the contract requirements at no additional cost to the Commonwealth. **The Bidder may submit Bid Samples with their bid submission.** All Bid Samples received with any bid submission shall conform to the same provisions stated above.

- 4.9 **Delivery Locations and Times:** The goods shall be delivered to Virginia Industries for the Blind, 1535 High Street, Richmond VA 23220, unless otherwise stated on the agency Purchase Order. Normal hours for delivery shall be between the hours of 8:15AM and 4:30 PM, except on official state holidays and periods of shut down, unless otherwise instructed by the purchaser. The Vendor shall clarify and coordinate deliveries with the purchaser.
- 4.10 **Delivery Charges/ Minimum Orders:** All purchase orders of \$100.00 or more must be shipped FOB Destination, freight included in the contract unit price, to the agency. For any purchase order of \$99.99 or less; the Vendor may add actual transportation cost, prepaid and added to the invoice; or the agency may purchase such item off-contract from other sources.
Partial shipments of less than the minimum order value which; a) are made at the option of the Vendor: shall be made FOB Destination, with no additional shipping charges added. b) are made upon the request of the ordering entity: the Vendor may add actual transportation costs, approved by the ordering entity, to the invoice for payment. The Vendor shall notify the purchaser of the freight charges and obtain their approval prior to any shipment.
- 4.11 **Delivery Date:** Delivery of all requested contract items ordered shall be made within 7 calendar days after receipt of the purchase order. The Contractor shall carry an adequate stock to insure such delivery service for the duration of the contract.
- 4.12 **Taxes:** No Taxes are to be included in the Bid Response pricing. The ordering agency as described herein shall furnish their Tax Exemption Registration number upon request.
- 4.13 **Warranty:** All items/components will be provided with a written warranty against defects in materials and workmanship from the supplier or manufacturer for a minimum period of one year. The Bidder shall supply warranty information, for each item bid.
- 4.14 **Packaging:** Items shall be individually wrapped or packaging in other suitable containers. Items shall be packed into adequate shipping boxes that will properly protect each item from damage when shipped.
- 4.15 **Inspection and Verification:** The Commonwealth reserves the right to inspect and verify all items and to reject any shipment which exceeds a failure rate greater than 10% of the total number of items in that shipment. The Contractor shall provide replacement delivery service for any rejected/defective goods anywhere within the Commonwealth of Virginia within 72 hours (24 hours for emergency orders) of verbal or written notice. All such replacement shipments will be limited to the actual number of defective materials received. All necessary shipping and other associated costs

shall be born by the Contractor. Failure to replace such defective materials within the specified timeframes with correct material may be cause for the Commonwealth to declare the Contractor in default of the Contract.

- 4.16 **Ordering:** The parties agree that all orders issued under this contract by the Ordering Agency shall be processed through eVA. Orders against this contract which are not processed through eVA are not in compliance with the terms and conditions of this contract and Contractors receiving such non-eVA orders shall request the Ordering Agency to resubmit the order through eVA. If the contractor accepts an order under this contract, where the order has not been processed through eVA, the contractor will be in breach of contract. If an Ordering Agency issues an order which is not processed through eVA, but purports to be authorized by this contract, the Ordering Agency employees may be found in violation of Section 2.2-4376 of the Code of Virginia. Section 2.2-4376 prohibits public employees from knowingly making false statements or misrepresentations, and from using documents known to contain false statements or misrepresentations.

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 "Vendor" 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/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: 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 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/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: 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 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: 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 OF BIDDERS: 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: 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/offers) 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: By submitting their (bids/proposals), all (bidders/offers) 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 4).Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.).

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: 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) 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 and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows: a. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse. b. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows: a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order. b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is: (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order. (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order. c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is: (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order. (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order. d. For orders issued July 1, 2012 and after, the Vendor Transaction Fee is: (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order. (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order. The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

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

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

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

CC. 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. 34 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 because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

SPECIAL TERMS AND CONDITIONS

- 5.1 ADDITIONAL INFORMATION: The Commonwealth reserves the right to ask any Bidder to submit information missing from its bid, to clarify its bid, and to submit additional information, which the Commonwealth deems desirable.
- 5.2 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 and or the issuing agency/public body, will be used in product literature or advertising. The contractor shall not state in any of its advertising, product literature or client lists, that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- 5.3 AWARD TO MULTIPLE BIDDERS and TO OTHER THAN THE LOWEST PRICE BIDDER(S): The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made on a per Lot basis to the lowest responsive and responsible bidder per lot, however; the award may be made to a reasonably priced VA DMBE-certified small business bidder(s) that is other than the lowest priced bidder(s). Evaluation to determine the lowest bidder in each Lot will be based on the *Lot Grand Total*. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the Bidder to render required services. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.. If cash discount for prompt payment is offered, it must be clearly shown. Discounts for prompt payment will not be considered in making awards.
- 5.4 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.
- 5.5 AUTHORIZED DISTRIBUTOR: By signing this bid, the Bidder certifies that it is a manufacturer-authorized distributor for all goods and services it proposes to furnish under any resulting contract. If requested by the Commonwealth, the Bidder shall provide supporting evidence from the manufacturer.
- 5.6 BID ACCEPTANCE PERIOD: Any bid in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days, the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- 5.7 BID PRICES: Bid shall be in the form of a firm unit price for each item during the contract period.
- 5.8 CONTACT INFORMATION: The bidder shall provide a telephone number, facsimile number, cellular number, email address, physical address, and the name of responsible person(s) of your company who may be contacted regarding this contract and required reports. The bidder must provide this information in the space provided in Exhibit 1, Bidder Data Sheet.
- 5.9 CONTRACT DOCUMENTS: The contract entered into by the parties shall consist of the Invitation for Bids, the bid submitted by the Contractor; General Terms and Conditions, these Special Terms

and Conditions; the specifications; a resulting Purchase order and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.

- 5.10 CANCELLATION OF CONTRACT: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- 5.11 CONTRACTOR'S TITLE TO MATERIALS: No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- 5.12 DELIVERY: The bidder shall include in their submitted solicitation response where requested the appropriate delivery days, not to exceed any minimum delivery dates otherwise stated in the IFB. This date may be a factor in making the award.
- 5.13 EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete delivery ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.
- 5.14 PROMPT PAYMENT DISCOUNTS: Agency will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment should be included in your bid where indicated. Discounts will not be calculated in determining net low bid.
- 5.15 SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The contractor shall extend any special educational or 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.
- 5.16 SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:
- A. 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 bidders are required to submit a Small Business Subcontracting Plan. Unless the bidder 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 bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Virginia Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or 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.

- B. 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 yearly 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.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on an annual 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.
- 5.17 ERRORS IN BIDS: Errors in bids will be handled in accordance with section 5.13 of the *Vendors Manual*.
- 5.18 NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.
- 5.19 eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract may 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 thru June 30, 2011, the Vendor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.
- c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
- (i) DMBE-certified Small Businesses: 0.75%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at \$1,500 per order.
- d. For orders issued July 1, 2012, and after, the Vendor Transaction Fee is:
- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

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

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

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

- 5.20 NAME OF MANUFACTURER AND SHIPPING POINT: The bidder shall supply the name and address of the manufacturer of each item offered and the shipping point where indicated in the solicitation.
- 5.21 MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC) / PAYMENT TERMS/OPTIONS: Contract Users pay by check, electronic funds transfer (ETF), or with the Commonwealth's authorized procurement card. Standard payment terms are net 30 days from products delivery or properly executed invoice receipt. 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 award.

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 current SPCC vendor, (Bank of America Visa- subject to change) 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 One (1): Vendors provide basic credit card purchase information, including but not limited to ITEMS A through D, as listed below. By passing Level 1 “Basic Data”, the vendor has a standard interchange cost.

Level Two (2): Vendors provide purchase information, including, but not limited to ITEMS A through F, as 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 accepts the current SPCC vendor, Bank of America Visa card.

Level Three (3): Vendors provide purchase information, including, but not limited to ITEMS A through L, as listed below. By passing Level 3 (**which is optional**) data which is considered Superior data, the vendor will receive the lowest interchange costs.

- | | |
|---|------------------------------|
| A) Supplier Name, | G) Item Description, |
| B) Merchant Category Code, | H) Item Quantity, |
| C) Date, | I) Item Unit of Measure, |
| D) Total Purchase Amount | J) Product Code, |
| E) Customer Code (PCO Number from eVA), | K) Freight Amount, |
| F) Vendor Tax ID, | L) Extended line Item Amount |

5.22 **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in advance in writing by the Contract Officer. The Agency may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

In the event any item on the contract is to be discontinued and/or replaced by a new item, the Contractor must notify the Contract Officer in writing in advance of the product discontinuance/replacement. A formal contract modification will be processed by the Contract Officer to reflect these types of changes.

- 5.23 PRODUCT INFORMATION: The Bidder shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid to be considered nonresponsive.
- 5.24 QUANTITIES: Quantities set forth in this solicitation are estimates only, no quantity or dollar volume of business shall be guaranteed. The contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- 5.25 RECEIPT AND OPENING OF BIDS: It is the responsibility of the Bidder to assure that his/her bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. Bids received after the time designated for receipt of bids will not be considered.
1. Bids will be opened at the time and place stated in the solicitation. The officer or agent of the owner, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.
 2. The provisions of § 2.2-4342 of the *Code of Virginia*, as amended, shall be applicable to the inspection of bids received.
- 5.26 REFERENCES: Bidders shall provide a list of at least 3 references on the BIDDER DATA SHEET, where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.
- 5.27 RENEWAL OF CONTRACT: Any contract resulting from this solicitation will be for effective for two (2) years and may be renewed by the Commonwealth upon written agreement of both parties for up to three (3) successive one-year or model year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
- 5.28 STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2- 4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided in Exhibit 2. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to

transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

- 5.29 **SUBCONTRACTS:** In the event that the Contractor desires to subcontract some part of its obligation hereunder, the Contractor shall furnish the Commonwealth with the names, qualifications and experience of their proposed Subcontractors. No portion of the contract shall be subcontracted without prior written consent of the Commonwealth. The Contractor shall remain fully liable and responsible for its Subcontractor(s) and shall assure compliance with all requirements of the contract. The bidder must include all planned subcontractors with their bid.
- 5.30 **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of One-Year following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.
- 5.31 **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted **only** for changes in the contractor's cost of materials. The **PRODUCER PRICE INDEX (PPI), Series ID # WPU1595** titled "*Pens, Pencils and Marking Devices*", as well as any sub-categories of this Series ID # deemed applicable by the DPS Contract Officer, may be used as a guide. Other relevant market conditions, if determined appropriate and approved by the Contract Officer, may be used as additional guides to evaluate requested price changes. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 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 submit requests to the DPS Contract Officer, no less than 30 days in advance of any *proposed* effective date of a price increase. 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, unless otherwise stated by the Contract Officer. The contractor shall document the percentage and dollar value of the increase requested for each contract item and shall provide a proposed effective date of the price change. Documentation must be supplied with the contractors 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 of percentage of increase which is being passed on to the contractor by the contractors suppliers.

The purchasing office will notify the using agencies in writing of the effective date of any increases 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 and may not hold any orders pending a response to an increase request. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

5.32 PURCHASE VOLUME REPORTS: The Contractor shall furnish the Division of Purchases and Supply (DPS) a statement covering the total dollar volume of purchases made under this contract and a report of the total number of each contract item delivered under this contract on an annual basis and approximately 90 days prior to the contract expiration. See Section 6.0 for additional information.

5.33 CONTINUITY OF SERVICES:

a) 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:

(i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

(ii) 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

(iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

5.34 FINANCIAL WARRANTY: Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot

purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

REPORTS

- 6.1. Purchase Volume Report (PVR): The Contractor shall furnish the Division of Purchases and Supply a PVR in accordance with the Special Terms and Conditions "*Purchase Volume Report*". The PVR shall be provided electronically in Excel, formatted similar to the example below and be itemized to include the minimum purchase information listed. There shall be no exceptions from this requirement without a written request approved by the Contract Officer.
- 6.2. Small Business Plan Final Actual Involvement Report: The Contractor shall submit to the Contract officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses, women-owned businesses and minority-owned businesses during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned, minority-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the bid, and the actual percent of the total estimated contract value. A suggested format is shown below.
- 6.3. The Contractor shall also respond to and deliver any requested non-scheduled reports or inquiries from the Contract Officer, or his/her designee as requested and at no extra charge.

Example 6.1 Purchase Volume Report

Contract # _____					Coverage Period _____ to _____		
Order Date	Agency Name	Agency Acct. #	Agency PO#	Qty	Contract Item # and Description	Unit Price	Invoice Total
TOTALS							

Example 6.2 Small Business Plan Final Actual Involvement Report

Contract # _____	Coverage Period _____	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
FIRM NAME, ADDRESS, AND PHONE NUMBER	TYPE GOOD/SERVICES			
TOTALS				