

DIVISION OF PURCHASES AND SUPPLY

1111 E. BROAD STREET, P. O. BOX 1199
RICHMOND, VIRGINIA 23219-1199

CONTRACT RENEWAL

- 1. DATE:January 1, 2011
- 2. COMMODITY NAME:Stoker Coal (Grade A & C)
- 3. COMMODITY CODE: 40506
- 4. CONTRACT NUMBER:E194-673
- 5. SUPERSEDS.....E194-673-10
- 6. CONTRACT PERIOD:January 1, 2011 through August 31, 2011
- 7. AUTHORIZED USERS:Limited to Select Agencies
- 8. CONTRACTORS' DUNS:826391005
- 9. CONTRACTOR:J & J Energy Inc.
P. O. Box 12426
Roanoke, VA 24025
- 10. CONTACT:**Susanne B. Huddleston**
Telephone: (540) 989-8570
Fax: (540) 989-8571
E-mail: shuddleston@jandjenergy.com
- 11. TERMS:Net 30
- 12. DELIVERY:30 days ARO
- 13. F.O.B.:Richmond, Virginia
- 14. FOR FURTHER CONTRACT INFORMATION CONTACT:Sandra D. Smith, VCO
Telephone: (804) 786-0078
E-mail: sandra.smith@dgs.virginia.gov

ADDITIONAL COPIES OF CONTRACTS AND ANY ASSOCIATED CONTRACT CHANGES MAY BE VIEWED AND PRINTED AT THE DPS WEBSITE: www.dgs.state.va.us/dps

NOTICE TO ALL STATE AGENCIES: This contract is the result of a competitive bid program and its use is mandatory for all State Agencies (unless otherwise indicated in item 7 above) in the purchase of any commodity listed herein. If the commodity or services available under this contract cannot be used by an agency, a request to purchase other goods or services of a similar nature shall be submitted to the appropriate DGS/DPS contract/purchase officer for approval. A complete and factual written justification is necessary to support the request. Refer to Section 13.7a of the Agency Procurement and Surplus Property Manual.

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.

By: 

Sandra D. Smith / Statewide Contract Officer

INSTRUCTIONS

Purchase orders will 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. If this contract is authorized for use by localities, Virginia cities, counties, town and political subdivisions may use this contract only if the orders are placed through Eva.

1. ORDERS:
 - A. Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia will order items/services through eVA.
 - B. If this contract is authorized for use by localities, Virginia cities, counties, towns and political subdivisions, orders will be placed through eVA to the maximum extent possible.
2. The applicable contract number, federal employer identification number (FEI) or DUNS 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. Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia City, county, town or political subdivision.
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. Preprinted forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available from the Division of Purchases and Supply (225-4045). The electronic version may be downloaded from the internet at the following link:

<http://www.eva.virginia.gov/buyers/index.htm>
5. Renewals. Three (3) Renewals remain.
6. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of providing goods and services. The "Services", "All Items", and other relevant categories of the CPI-U, U.S. City Average section of the Consumer Price Index of the U.S. Bureau of Labor Statistics, will be used as guides to evaluate requested price changes, as will other indices including Producer Price Index and U.S. Department of Energy fuel statistics, NYMEX and any other indices available. Price escalation for coal may be permitted only at the end of 365 calendar days and each 365 calendar days thereafter and only where the Contractor has verified to the satisfaction of the purchasing office, with the exception that cost of transportation price escalation may be permitted only at the end of the initial 90 days of the contract. No price increases will be authorized for 365 calendar days after the effective date of the contract, with the exception that the Commonwealth will consider price adjustment requests 90 days after the effective date of the contract based on changes in fuel cost for transportation. The Contractor shall submit a written request to DPS 30 days prior to the 90 day mark. The Contractor will be notified if the requested cost of transportation increase is approved; the Contractor shall continue to charge the current prices until such approval is granted in writing from DPS. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Note: If you need a copy of the specifications or any other information regarding this contract, please contact the Contract Officer assigned to this contract.



Master Agreement - E194 - 673 - New - Final

**Term Contract for Stoker Coal – Grade A & C
DMBE Certified Small & Woman Owned Business**

Created On: 1/1/2011
Procurement Folder: 43399
Effective Begin Date: 1/1/2011

NIGP Commodity Code 40506
Procurement Type: IFB
Expiration Date: 8/31/2011

Contact Information

Sandra D. Smith VCO
Email: Sandra.smith@dgs.virginia.gov

Phone: (804) 786-0078
Fax: (804) 786-5413

Legal Name: J&J Energy Inc
Location Legal Name: Roanoke - J&J Energy Inc
Address: P.O. Box 12426
Roanoke, VA 24025-2426
FIN #: 54-1694786
REMITTANCE ADDRESS:
J & J ENERGY INC.
P O Box 1504
Princeton, WV 24740
Vendor Contact Phone: (540) 989-8570
Fax: (540) 989-8571

Vendor Contact Name: Susanne B. Huddleston
Vendor Email: shuddleston@jandjenergy.com
Vendor Type: Primary

RENEWAL OF CONTRACT

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

COAL ANALYSIS PRIOR TO SHIPMENT

COAL ANALYSIS PRIOR TO SHIPMENT: The successful bidders will be required to test and run a product analysis on the coal prior to making shipment. Coal not meeting the specifications in all respects will not be shipped. This requirement should eliminate shipments being rejected and or returned to the point of origin. A copy of this analysis shall accompany each shipment and be provided to the receiving agency. Failure to meet this requirement may result in the contractor being declared in default of the contract.

Renewal Periods

Line Number	Renewal Period Length	Renewal Period Unit	Effective Date	Expiration Date	Notification Days (Prior to Expiration)
1	1	Years	9/1/2010	8/31/2011	90
2	1	Years	9/1/2011	8/31/2012	90
3	1	Years	9/1/2012	8/31/2013	90
4	1	Years	9/1/2013	8/31/2014	90

Terms And Conditions

Section GEN

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.dgs.state.va.us/dps under "Manuals."

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.

ANTI-DISCRIMINATION (1 of 2)

ANTI-DISCRIMINATION (part 1 of 2): 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). (continued on part 2)

ANTI-DISCRIMINATION (2 of 2)

ANTI-DISCRIMINATION (part 2 of 2): 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

CHANGES TO CONTRACT (1 of 2)

CHANGES TO THE CONTRACT (part 1 of 2): 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: (2a.) By mutual agreement between the parties in writing; or (2b.) 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 (continued on part 2)

CHANGES TO CONTRACT (2 of 2)

CHANGES TO THE CONTRACT (part 2 of 2): (2c.) 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.

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.

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.

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.

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.

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)

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)

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

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) for a minimum of 10 days.

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.

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.

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.

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. DMBE-certified women- and minority-owned businesses are also considered small businesses when they have received DMBE small business certification. Small businesses must be certified by DMBE not later than the solicitation due date.

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)

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)

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.

PAYMENT (4 of 4)

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

eVA REGISTRATION (1 of 2)

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION (part 1 of 2): The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected. (Continued on part 2)

eVA REGISTRATION (2 of 2)

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION (part 2 of 2): a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse. b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments. c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order. d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is: (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order. (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

Special terms And Conditions

SCOPE: *SET ASIDE FOR SMALL BUSINESS* The purpose of this invitation is to solicit SEALED bids that will result in a term contract(s) for furnishing the stoker coal grades as described herein to authorized users, if and when ordered, during the contract period. Bidders are strongly encouraged to submit bids electronically through eVA. However, you may submit your bids in writing as described below.

RENEWAL OF RESULTING CONTRACT(S): This contract may be renewed by the Commonwealth for four (4) successive one-year periods under the terms and conditions of the original contract except as stated below. Price adjustments may be permitted for changes in the contractor's cost of providing goods and services. The "Services", "All Items", and other relevant categories of the CPI-U, U.S. City Average section of the Consumer Price Index of the U.S. Bureau of Labor Statistics, will be used as guides to evaluate requested price changes, as will other indices including Producer Price Index and U.S. Department of Energy fuel statistics, NYMEX and any other indices available. Price escalation for coal may be permitted only at the end of 365 calendar days and each 365 calendar days thereafter and only where the Contractor has verified to the satisfaction of the purchasing office, with the exception that cost of transportation price escalation may be permitted only at the end of the initial 90 days of the contract. No price increases will be authorized for 365 calendar days after the effective date of the contract, with the exception that the Commonwealth will consider price adjustment requests 90 days after the effective date of the contract based on changes in fuel cost for transportation. The Contractor shall submit a written request to DPS 30 days prior to the 90 day mark. The Contractor will be notified if the requested cost of transportation increase is approved; the Contractor shall continue to charge the current prices until such approval is granted in writing from DPS. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period. Contractor shall give not less than 30 days advance notice of any price increase request, with documentation, to the purchasing office. The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the

REGULATORY LEGISLATION: All contracts relating to the procurement of coal are subject to all rules, regulations and limitations imposed by regulatory legislation of the Federal or State Government.

ADDITIONAL REQUIREMENTS: The Commonwealth has several coal-fired boilers that are operated only on a stand-

by basis. The requirements if any, for these plants, are unknown and are not scheduled on this Invitation for Bid. The Division of Purchases and Supply reserves the right to purchase coal from the successful Contractor for delivery to any of these stand-by plants at the contract price.

SUBSTITUTION OF OTHER COALS: It is understood that in specifying a particular type of coal for any agency, and in accepting a particular bid therefore, the Division is acting upon the best information at its disposal; but if it later develops through experience with the particular coal contracted for that such coal is unsuited for the purpose for which it is purchased, the Division may, in its sole discretion cancel the contract for such unsuitable coal up to the amount of the undelivered tonnage on said contract. The division, in its sole discretion may negotiate with the contractor of the coal declared unsuitable to furnish suitable coal to the extend of the cancelled tonnage, or may procure such coal from other sources.

SAMPLING AND ANALYSIS: In determining compliance with the requirements, it is agreed that the Division may employ, as nearly as practicable, sampling procedures currently approved by the American Society for Testing Materials (ASTM). Analysis will be made by a commercial laboratory designated by or acceptable to the Department of General Services/Division of Purchases & Supply. Unless the contractor objects to any report of analysis within ten (10) calendar days after report of same is mailed to him/her, the data shown in such report will be considered correct and binding under the provisions of the Contract.

INSPECTION OF PREMISES: Any duly authorized representative of the Department of General Services / Division of Purchases and Supply shall have the right to inspect, at any reasonable hour, the mine and other premises, of any person to whom a contract is awarded for coal subject to these requirements. Inspection shall be limited to those facilities utilized in the production, preparation and transport of the contracted coal.

PRICE ADJUSTMENT: Furnished coal shall comply with all descriptions as shown on the Bidder's Data Sheet and with the specifications contained in this bid. The Commonwealth reserves the right to collect a sample(s) from any shipment(s) for testing purposes. Failure of a sample to meet any of the specification requirements may result in the assessment, against the contractor by the Commonwealth, of one or more of the following price adjustments on the entire tonnage of the shipment from which the sample(s) is taken:

- A. BTU Deficiency – heat content of the coal as shown on the Bidder's Data Sheet shall be considered as minimum guaranteed heat content on the "Dry Basis" for the coal proposed to be furnished during the contract period. Coal will be sampled and analyzed by a laboratory chosen by the Commonwealth. In the event of a coal not meeting the minimum requirements, a monetary reimbursement to the agency by the contractor shall be computed as follows, based upon the price of the coal:
 - a. Divide the guaranteed BTU "Dry Basis" content into the BTU "Dry Basis" content as shown on the analysis report. Multiply the ratio obtained above by the value of the coal per ton (including any oil/chemical or freeze proofing treatment). The product obtained is subtracted from the bid price per ton of coal. The difference is multiplied by the actual tonnage which the analysis report covers. The product of the average analysis is the monetary reimbursement that the Contractor shall reimburse the institution/agency. Price adjustments for deficiency in the guaranteed BTU "Dry Basis" will not be imposed until the BTU deficiency is 100 BTU's or more per pound in which case, the total deficiency amounts shall be subject to price adjustment.
 - b. In the event the failure of a coal to meet the analysis shown on the Information Sheet, the Division may cancel the contract for the remaining tonnage of the particular coal in questions and exercise Paragraph P of the general terms and conditions.
- B. Ash Deficiency – price adjustments may be imposed for ash content in excess of the "Dry Basis" maximum limit as stated in the bid specifications. Price adjustments will be based upon a formula of a \$.50 adjustment per ton for each percentage point of ash in excess of the specification limit. Excessive ash content will not be imposed until the excess ash content is ½ percent or more, in which case, the total excess amount shall be subject to price adjustment.
- C. Sulfur Deficiencies – a price adjustment of \$1.00 per ton may be applied for every one-tenth of one percent of sulfur content in excess of the maximum sulfur limitation as indicated in the bid specifications. The excessive sulfur will be determined from laboratory test reports. This price adjustment will be applicable to the entire tonnage from which the sample is taken. NOTE: CONTINUED AND EXCESSIVE SPECIFICATION DEFICIENCIES MAY BE GROUNDS FOR DEFAULT OF CONTRACT.

PROXIMATE ANALYSIS REPORTS: In addition to the requirements outlined herein, the bid shall be accompanied by actual proximate analysis on "as Received" and "Dry Basis" of each coal offered. This analysis must also provide the free swelling index and the grind, which shall not exceed the hard-grove grind-ability index of 55 and be no less than 50. Each analysis must have been made within six (6) months of the bid opening date by a recognized commercial laboratory, with the contact person, email address, phone number and must be submitted on the analysis report form of the laboratory performing the testing.

WEIGHT: All truck shipments shall be weighed on certified scales. Such scales shall be approved and sealed by the Office of Product and Industry Standards of the Virginia Department of Agriculture and Consumer Services or by other approved agencies, within the previous 12 months. All truck shipments shall be accompanied by certified weight tickets listing tare weight and net weight of the coal.

FREIGHT COSTS AND BID PRICES: Unless otherwise specified on the quote sheets, delivery shall be F.O.B Destination. Bidders shall separate transportation cost from coal costs since any price adjustments for deficiencies will be applied to the coal cost only. Bidders are to specify freight costs per ton for each item offered on the Price Sheets and indicate such on the Bidder Data Sheet whether these costs are based upon rail or truck delivery. Rail cost quotation will be verified with the applicable rail carrier and will be subject to any applicable adjustments.

DELIVERY SERVICE: Delivery of all requested contract items shall be made within 30 calendar days after receipt of purchase order or unless a later date is specified by the ordering entity. Contractor shall carry an adequate stock to insure such delivery service for the duration of the contract. Delivery of rail car or truck load quantities which exceed the purchasing order quantity may be rejected by the user agency, in which case, the Contractor shall bear the full transportation cost for the rejected coal.

Buchanan Correctional Center: Delivery Times: 7:30 am to 4:30 pm. Delivery drivers shall contact the Power Plant Personnel prior to dumping coal; this requires the driver to exit their truck and enter the Power Plant so agency personnel can inspect/confirm the load prior to it being unloaded.

COAL ANALYSIS PRIOR TO SHIPMENT: The successful bidders will be required to test and run a product analysis on the coal prior to making shipment. Coal not meeting the specifications in all respects will not be shipped. This requirement should eliminate shipments being rejected and or returned to the point of origin. A copy of this analysis **shall accompany each shipment** and be provided to the receiving agency. Failure to meet this requirement may result in the contractor being declared in default of the contract

eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: It is anticipated that the contract will result in a purchase order (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order.

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

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.state.va.us, 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.

COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply

IFB # E194-1186

Specifications: SET-ASIDE FOR SMALL BUSINESSES

The following specifications are written to meet the needs of the Commonwealth and the authorized users. Questions regarding these specifications shall be directed to Jessica Milburn via email: jessica.milburn@dgs.virginia.gov

Coal shall be free from dirt, bone and slate, and shall conform to the following:

NOTE: Stoker – Maximum fines: 7% at point of railroad or truck unloading

Specification requirements are based upon “as received”, except for BTU and Ash Content which are on the dry basis.

Special Note: Greenville Correctional Center: Maximum Ash is 6.8% per state permit.
 Virginia Correctional Center for Women at the Goochland location: Sulfur shall not exceed .9%

Virginia Specification Grades: A and C

Stoker Size:	A (1-1/4" x 1/4")	C (1-1/2" x 3/4")
Max. Volatile ASTM (D3175)	No Limit	No Limit
Max. Ash - Dry ASTM (D3174)	7.0%	7.0%
Max. Sulfur ASTM (D3177)	1.0%	1.0%
Min. BTU – Dry ASTM (D2015)	13,800/lb.	13,800/lb.
Min. AST ASTM (D1857)	2,600°F	2,600°F
Max. Free Swelling Index ASTM (D720)	6.0	6.0
Moisture Content	6%	6%
Hard-grove Grind-ability Index .	50-55	50-55

All specifications listed are subject to change as directed by the Commonwealth’s Department of Environmental Quality (DEQ). Vendors shall adhere to any changes required by DEQ during this and any renewal contract periods.

See attached Price Sheet (Attachment E) for more agency specific requirements such as delivery type (rail or truck), delivery restrictions, delivery hours, and location.