



COMMONWEALTH OF VIRGINIA
 DIVISION OF PURCHASES AND SUPPLY
 PO Box 1199
 RICHMOND, VA 23218-1199

Notice of Contract Award

CONTRACT # E194-72823

Contract Title: Durable Medical Equipment Acquisition (Wheelchairs)

1	DATE:	May 10, 2013
2	CONTRACT PERIOD:	May 6, 2013 through April 30, 2015
3	SUPERSEDES:	47080-01
4	AUTHORIZED USERS:	Woodrow Wilson Rehabilitation Center
5	CONTRACTOR'S eVA VENDOR ID#:	VS0000105536
6	CONTRACTOR / VENDOR	National Seating & Mobility, Inc.
7	CONTRACTOR CONTACT	<p>1st Contact: Phyllis Edwards, Sales Mgr, VA Email: pedwards@nsm-seating.com 2nd Contact: Linda Dew, General Mgr, VA Email: ldew@nsm-seating.com 5873 Poplar Hall Drive Norfolk, VA 23502 Phone: 757-466-1553 ext. 329 Fax: 866-593-0083</p>
8	TERMS	<p>Reference the original Request for Proposal, The Statement of Needs, General and Special Terms and Conditions, The Contractor's Proposal dated 2/9/2013, Addendum 1, Clarification response, Negotiations, Modification 01, and any other negotiated items.</p>
9	DELIVERY	Refer to terms within the Request for Proposal
10	F.O.B.	Destination
11	CONTRACT PRICES	Refer to Section 5, Page 8
12	DPS CONTRACT OFFICER	<p>Name: Tina M. Rodriguez, CPPB, VCO Statewide Contract Officer Phone: 804-786-1603 Email: tina.rodriguez@dgs.virginia.gov</p>

ADDITIONAL COPIES OF CONTRACTS AND ANY ASSOCIATED CONTRACT CHANGES ARE AVAILABLE ON THE DPS WEBSITE: www.eva.virginia.gov under the State Contracts webpage.

NOTICE TO WOODROW WILSON REHABILITATION CENTER: This contract is the result of a competitive negotiation process and its use is (Mandatory). If any commodity available under this contract cannot be used by WOODROW WILSON REHABILITATION CENTER, a request to purchase other goods or services of a similar nature shall be submitted to the DGS/DPS Contract 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, 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.

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1. CONTRACTOR / VENDOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address(es)	Contact Information (Name, Phone, Fax and Email)
National Seating & Mobility, Inc.	VS0000105536	5873 Poplar Hall Drive Norfolk, VA 23502	1st Contact: Phyllis Edwards, Sales Mgr, VA Email: pedwards@nsm-seating.com 2nd Contact: Linda Dew, General Mgr, VA Email: ldew@nsm-seating.com 5873 Poplar Hall Drive Norfolk, VA 23502 Phone: 757-466-1553 ext. 329 Fax: 866-371-7739

2. GENERAL INSTRUCTIONS

1. **Ordering Method:** Unless otherwise instructed or exempted by DPS, Woodrow Wilson Rehabilitation Center must order items by issuing purchase orders through 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. **Purchase Order Information:** When placing an eVA non-catalog order, each line of the requisition must be identified with the correct Contractor Name and Location (eVA Vendor ID#), contract item number, full item description and the contract unit price. The exact Contract Number, as shown on page 1, **must** be inserted in the Contract Number field for each line item of the eVA requisition. Purchase orders not bearing the correct contract number in the appropriate location will be non-compliant and may not be considered a purchase against this contract.
3. **Ordering Entity Acceptance:** Inspection and acceptance upon delivery and approval of vendor's invoice is the responsibility of the receiving entity.
4. **Complaints:** Any complaint that is due to a violation or breach of the Contract provisions shall be reported on an official DPS "PROCUREMENT COMPLAINT FORM" (Form # DGS-41-024). To facilitate notification, this form shall be completed by the ordering entity and sent to the contract vendor, with a copy sent to DPS to the address shown on the form. Contract vendors shall also use this form to initiate complaints concerning entities. This form may be downloaded from the internet at the following link <http://eva.virginia.gov/learn-about-eva/files/VendorComplaintForm.doc>.

3. APPROVED MANUFACTURER LIST

<u>MANUFACTURE</u>	<u>WEBSITE (link)</u>
Active Aid	http://activeaid.com/products - Master Price List Tab
Adaptive Engineering Labs	https://aelseating.com/index.php -Resources
Adaptive Switch Labs	http://www.asl-inc.com/products/pricelist
Body Point	http://www.bodypoint.com/ - BP is upgrading their website and at this time do not have a retail price list.
Comfort Company	http://www.comfortcompany.com/pub/downloads/Pricing/2012%20Retail.pdf
Dynamic Systems	http://www.sunmatecushions.com/
Easy Stand (Altimate)	http://www.easystand.com/products.cfm
Falcon/Labac	http://www.falconrehab.net/products/order-forms.php
Freedom Design	http://www.freedomdesigns.com/Seating%20and%20Positioning.html
Graham Field	http://www.grahamfield.com/content/catalog.aspx - select product desired.
Hudson	http://www.hudsonmedicalproducts.com/2010/index.html
Invacare	http://www.invacare.com/cgi-bin/imhqprd/inv_catalog/prod_cat.jsp?s=0&WT.svl=topNavLink0 -select product; then select order form. This is an interactive order form.
Ki Mobility	http://www.kimobility.com/order-forms.php
Levo	http://www.levousa.com/order/chair-order-forms.html
Medbloc (Motion Concept)	http://www.motionconcepts.com/order_forms_us.html
MK Battery	http://estorebb.mkbattery.com/
Otto Bock	http://www.ottobockus.com/cps/rde/xchg/ob_us_en/hs.xsl/4714.html - select product; then order forms.
PDG	http://www.pdgmobility.com/PDG-Wheelchair-Specs.html
Permobil	http://www.permobilusa.com/USA/Order-forms/ -this is an interactive order form.

<u>MANUFACTURE</u>	<u>WEBSITE (link)</u>
Pride	http://www.pridemobility.com/quantum/powerbases/index.asp -select product, order form.
Roho (Crown)	http://www.therohogroup.com/products/downloads.jsp -US Retail Pricelist.
Span America	http://www.spanamerica.com/product-catalog-new.php
Stealth	http://www.stealthproducts.com/pdfs/2007_Price_Lists.pdf
Sunrise Medical	<p>http://www.sunrisemedical.com/products/order_forms_resource.jsp?FOLDER%3C%3Efolder_id=2534374307723781&theFolderID=2534374307723781&ASSORTMENT%3C%3EEast_id=1408474400872674&bmUID=1301451469353</p> <p>Sunrise Medical has under its umbrella both AES and Whitmyer. Those pricelists can be accessed with the following web address. It will open to all of the Sunrise companies. Click on the one that you desire to see and then there will be a tab for retail pricing.</p> <p>http://www.sunrisemedical.com/products/product_list.jsp?FOLDER%3C%3Efolder_id=2534374307723796&ASSORTMENT%3C%3EEast_id=1408474400872674&theFolderID=2534374307723796</p>
Supracor (Stimulite)	http://www.supracor.com/resources/medical/Supracor-Medical-Price-List.pdf
Tash Inc. (Ablenet)	http://webstore.ablenetinc.com/
TiLite	http://www.tilite.com/home.php

4. STATEMENT OF NEEDS/GENERAL & TECHNICAL SPECIFICATIONS

Reference the original Request for Proposal, The Statement of Needs, General and Special Terms and Conditions, The Contractor's Proposal dated 2/9/2013, Addendum 1, Clarification Response, Negotiations, Modification 01, and any other negotiated items.

5. PRICING SCHEDULE AND POINT OF CONTACT

32% Uniform percentage of discount of the list price for all Manufacturers' listed in Section 3 of this document. This percentage discount will remain firm throughout the life of the Contract.

POINT OF CONTACT

Norfolk: Phone: (757) 466-1553 Toll free: (877) 326-0972 Fax: (757) 455-8536
Address: 5873 Poplar Hall Drive, Norfolk, VA 23502

Richmond: Phone: (804) 353-7244 Fax: (804) 353-5976
Address: 2135 Staples Mill Road, Richmond, VA 23230

Fishersville: Phone: (877) 326-0972 Direct Line: (540) 332-7994 Fax: (866) 371-7739
Address: 50 Andrew Russell Lane, Fishersville, VA 22939

Charlottesville: Phone: (434) 971-8808
Address: 1717 Allied Street, Charlottesville, VA 22903

General Manager—VA

Linda Dew, RRTS
Office: 757-466-1553x326
Cell: 757-406-7594
Email: ldew@nsm-seating.com

Sales Manager--VA

Phyllis Edwards, ATP, CRTS
Office: 757-466-1553 x 329
Cell: 757-675-8508
Email: pedwards@nsm-seating.com

Rehab Technology Supplier

John Vaughn, ATP
Office: 877-326-0972 x 380
Cell: 434-987-9571
Email: jvaughn@nsm-seating.com

Back-up Rehab Technology Supplier

Matt Maurer, ATP
Office: 877-326-0972 x 508
Cell: 540-290-2743
Email: mmaurer@nsm-seating.com

Documentation/Authorization Inquiries

Angela Miller, Processor/Fishersville
Office: 757-466-1553 x 315
Email: amiller@nsm-seating.com

Fishersville Service

Paul Martin, Rehab/Service Technician
Phone: 877-326-0972 x 492
Cell: 540-224-0452
Email: pmarting@nsm-seating.com

6. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL**: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the Vendors tab.
- B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION**: By submitting their proposals, 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 proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their 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 submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS**: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting 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 RFP's**: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS**: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective 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.
- J. **PAYMENT**:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. 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.
 - d. **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.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the 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 offeror's physical

facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such 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 offeror 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 equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The 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 offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORATION AND PACKAGING:** By submitting their proposal, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a proposal under this solicitation, the 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 offeror further certifies that the contractor and any subcontractors will maintain this 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.).

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (<http://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, award, or performance of this contract because of race, religion, color, sex, national origin, age, disability, or against faith-based organizations. 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, 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.

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

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

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

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

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

- 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, offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of proposals. [This procurement has NOT been designated as a set-aside.](#)
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock 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.

7. SPECIAL TERMS AND CONDITIONS

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
2. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 60 days. At the end of the 60 days the response may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made for the solicitation is canceled.
3. **AWARD OF CONTRACT:** Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the RFP, including price, if so stated in the RFP. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the issuing agency shall select the Offeror that, in its opinion, has made the best proposal, and shall award the Contract to that Offeror. The Commonwealth may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (Section 2.2-4359D, *Code of Virginia*). Should the Commonwealth determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror. The award document will be a Contract incorporating by references all of the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.
4. **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. **CONTRACT RENEWAL:** This contract may be renewed by the Commonwealth upon written agreement of both parties for three (3) one (1) year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
6. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this proposal as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.
7. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.

8. **DELAYS IN AWARD:** The Commonwealth intends to award a contract with an initial term of two (2) years. Delays in award, beyond the anticipated starting date, may result in a change in the contract period indicated in the proposal. If this situation occurs, a contract shall be awarded for less than the initial term.
9. **IDENTIFICATION OF PROPOSAL ENVELOPE:** Omitted from Award document.
11. **EQUIPMENT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that equipment and identified in the solicitation without the prior written consent of the Contracting Officer whose name appears on the front of this solicitation, or their designee.
12. **MINIMUM ORDERS:** will be \$100.00 for F.O.B. delivery to ordering agency within the Commonwealth of Virginia. For orders of less than \$100.00, the contractor will be permitted to add actual transportation cost (prepaid) to invoice for payment, or the agency may purchase such order off contract from other sources. Partial shipments of less than the minimum order value which are made at the option of the contractor shall be made F.O.B. Destination with no transportation charges added. If at the agency's request shipments are below the minimum order value, the contractor may add actual transportation cost to invoice for payment.
13. **AUTHORIZED DEALER:** By signing this proposal, the Offeror certifies that it is a factory authorized dealer service representative for all equipment it proposes to furnish under any resulting contract and shall be accredited by a national recognized agency (i.e., JCAHO, ACHC, CHAPS). If requested by the Commonwealth, the Offeror shall provide supporting evidence from the manufacturer.
14. **OPTIONAL PRE-PROPOSAL CONFERENCE:** Omitted from Award document.
15. **PRICE ESCALATION / DEESCALATION:** The percent of discount will remain firm throughout the contract.
16. **HOURLY LABOR RATES:** No price increases will be authorized for the duration of the initial contract period. Price escalation may be permitted only when the Medicaid allowable rate is increased.
17. **PRODUCT AVAILABILITY/SUBSTITUTION:**
 - a. Unless otherwise stated all equipment furnished under this contract shall be new, unused equipment.
 - b. During the term of this contract or the extended warranty/maintenance agreement, the Contractor is not authorized to substitute any items for that product identified in the contract without the prior written consent of the Commonwealth.
 - c. Substitution of a product, brand or manufacture after award is expressly prohibited unless approved in writing by the Division of Purchases and Supply. The Commonwealth may, at its discretion, require the contractor to provide a substitute item of equal quality, subject to the approval of the Commonwealth, for the same price, if the product awarded becomes unavailable.
 - d. If the contractor cannot provide the specified equipment at all or within the needed time frame. WWRC reserves the right to purchase or rent same products outside of the contract.
 - e. In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced with new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus item without the prior written authorization of the Commonwealth.
18. **POINT OF CONTACTS:** [Information listed in Section 5, Pricing Schedule and Point of Contact.](#)

19. **PURCHASE CARD INFO:** The Commonwealth and other users of this contract may make purchases using a major credit card. Currently the Commonwealth uses Bank of America, VISA. Please list the major credit cards that will be accepted by your company under any resulting contract. [Master Card](#), [Visa](#), [American Express](#), and [Discover Card](#) accepted.

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

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

Charge Card Levels:

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

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

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

Level 2 vendors provide additional information to the Level 1 elements, including, but not limited to the data listed below. By passing level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept GE MasterCard.

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

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

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

20. **PURCHASE VOLUME REPORT:** The contractor shall furnish quarterly volume reports (January, February and March=1st quarter; April, May, and June=2nd quarter; July, August, and September=3rd quarter; and October, November, and December=4th quarter) within 15 days of the end of each quarter of the sales made under this contract to the Statewide Contract Officer, Tina M. Rodriguez. Report shall list item(s) and or services performed during the previous quarter along with the order number and dollar value.
21. **WARRANTY (COMMERCIAL):** The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation.
22. **INSPECTION OF WORK SITE:** My signature on this response constitutes that I have inspected the work site and am aware of the condition under which the work must be accomplished. Claims, as a result of failure to inspect the work site, will not be considered by the Commonwealth.
23. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.
24. **NEW PRODUCTS:** Unless otherwise expressly stated in this solicitation, all equipment furnished under the contract shall be new, unused equipment.
25. **CONFIDENTIALITY OF INFORMATION:**
 - A. The Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the property of Commonwealth or any user or other manufacturer. Contractor or Distributor whereby Contractor or any Contractor's personnel may gain access while engaged by Commonwealth or while on Commonwealth or user premises. Revealing, copying, or using in any manner whatsoever any such contents that have not been authorized by Commonwealth or user are strictly forbidden. The Contractor, its agents, employees, successors, subcontractors or any party who will have access to confidential Commonwealth information shall be required to sign a "Statement of Responsibility" form. The restrictions herein shall survive the termination of this Contract for any reason and shall continue in full force and effect and shall be binding upon the Contractor, its agents, employees, successors, subcontractors, or any party claiming an interest in this Contract on behalf of or under the rights of the Contractor following any termination. The Contractor shall advise all Contractor agents, employees, successors, and subcontractors that are engaged by Commonwealth of the restrictions, present and continuing, set forth herein.
 - B. The Contractor shall defend and incur all costs, if any, for actions that arise as a result of non-compliance by Contractor, its agents, employees, successors and subcontractors regarding the restrictions herein The Contractor shall keep all data, documents, opinions, and information of any kind strictly confidential and shall reveal such matters only to authorized representatives of the Commonwealth. For the same reason, all reports, estimates, working papers, tapes, pictures, documents, data, information, and materials of any kind made, collected, or produced by the Contractor or provided to it by the Commonwealth shall be turned over to the Commonwealth on request. The Contractor's obligations imposed by this paragraph shall survive and continue after completion of the remainder of the Contract and the Contractor shall continue to be responsible for any breach. Any information obtained by the Contractor concerning recipients

of services under this agreement shall be treated as confidential in accordance with relevant provisions of State and Federal law.

26. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any 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 proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and no definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the 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 (see **Attachment E**). [National Seating & Mobility SCC Number: F1094392. Form on file at the Department of General Services, Division of Purchases and Supply.](#)
27. **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 Contractor 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.
28. **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.

29. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS**: It is anticipated that the contract will result in multiple purchase orders (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 through 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, through June 30, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at \$1,500 per order.
 - d. For orders issued July 1, 2013, and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small businesses: 1%, capped at \$1,500 per order.

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

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

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid 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. Vendors should email Catalog or Index page information to eVA-catalog-manager@dgs.virginia.gov.

30. **ORDER PLACEMENT/METHOD**: 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. The Commonwealth requires contractors to accept orders via the eVA ordering system.
31. **CURRENT ON-LINE CATALOGS**: Vendor shall utilize the current on-line supplier catalogs and pricing. This pricing will be good for 120 days. WWRC will use one of the approved Manufacturer equipment specifications available on-line through the internet. Pricing of equipment will be based on Manufacturer's list at the time of the client's AT evaluation. It will be the responsibility of WWRC to

capture a “print-screen” of the current on-line Manufacturer’s pricing at the time of the order. On-line pricing will be valid for 120 days.
