

COMMONWEALTH OF VIRGINIA
 DIVISION OF PURCHASES & SUPPLY
 1111 E.BROAD TREET
 RICHMOND, VA 23218-1199

2013

CARPET TRADING PARTNER CONTRACT # E194-72834

SET-ASIDE FOR SMALL BUSINESS CARPET VENDORS

February 1, 2013

ATTN STATE AGENCIES/ PUBLIC BODIES & VENDORS: This (2013) agreement has the new group contract number E194-72834, which applies to ALL CARPET VENDORS/ DEALERS/ INSTALLERS.

Users must reference this contract number on all eVA Purchase Orders. Vendors/installers/dealers must reference this contract number on all Invoices.

(All changes below are in red)

EFFECTIVE DATE February 1, 2013
 COMMODITY Carpet, Nylon Tufted, Commercial/Business
 AGREEMENT PERIOD..... February 1, 2013 through January 31, 2014
 AUTHORIZED USERS..... State Agencies, Institutions, and Public Bodies

<u>Table of Contents</u>	<u>Page</u>
1. INSTRUCTIONS.....	2
2. TRADING PARTNER /VENDOR CONTACT LIST	4
3. TRADING PARTNER /VENDOR AGREEMENT	6
4. GENERAL TERMS & CONDITIONS	10
5. SPECIAL TERMS & CONDITIONS	17
6. STRATEGIC PARTNER AGREEMENT with MANUFACTURERS/MILLS	23
ATTACHMENT A	24

Following documents are attached on eVA Carpet Contract Data File

- 2013 MANUFACTURERS LINES AND VENDORS
- 2013 VENDORS BY LOCALITY
- 2013 MANUFACTURERS PRICES

DPS *CONTRACT MANAGER*: Dennis Donahue, C.P.M., VCO
 Phone: (804) 786-5410
 Fax : (804) 786-5712
 dennis.donahue@dgs.virginia.gov

ADDITIONAL COPIES OF THIS AGREEMENT AND ANY ASSOCIATED AGREEMENT CHANGES MAY BE VIEWED AND PRINTED AT THE DPS WEBSITE: www.eva.virginia.gov, State Contracts link.

Notice to State Agencies and other Authorized Users: This contract is the result of agreements between the Commonwealth, Carpet Manufacturers/Mills and their Authorized Dealers, also known as the Contract Trading Partners (Vendors). This is an Optional Use Agreement for the purchase of carpet, carpet installations and related services.

Users may use the budget pricing for estimating purposes (only) and the enclosed terms and conditions for carpet acquisition. *Read and follow INSTRUCTIONS below.*

Note: *This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.*

1. INSTRUCTIONS

All Trading Partner Vendors in this agreement have been certified by DMBE as a Small Business companies.

This agreement may be used by agencies, institutions, and other public bodies. All orders must be placed through eVA. Agencies will use eVA Quick Quote to the maximum extent practicable for purchases on this contract.

All users are urged to have vendors conduct a site visit to the workplace before quoting on jobs using this contract.

As per the Agency Procurement and Surplus Property Manual (APSPM) Small Purchase guidelines, the following applies for this contract:

For Purchases up to \$5,000 - obtain a minimum of one (1) quote

For Purchases Over \$5,000 up to \$50,000 - Solicit a minimum of four (4) quotes

For Purchases Over \$50,000 up to \$100,000- Solicit a minimum of four (4) quotes

In the event that you do not have enough partners listed for your city/county to satisfy above requirements, you may solicit other partners not listed for your area. This Contract may not be used for requirements exceeding \$100,000.

**Agencies will use eVA Quick Quote to the maximum extent practicable for small purchases up to \$100,000 after receiving approval from Division of Purchases and Supply (DPS) to increase its authority from general delegation of \$50,000 to \$100,000*

SCOPE OF AGREEMENT: To establish terms and conditions under which multiple dealers/installers (Trading Partners), who are VA DMBE certified as a Small Business, will sell and install carpet to the authorized users of this agreement. The Trading Partners represent various Carpet Manufacturers/Mills listed on the Contract documents. The authorized users of this agreement must place purchase orders, through eVA, only with a Trading Partner whose DMBE Small business certification is current and valid.

- I. The Trading Partner Agreement. This agreement details the Terms and Conditions under which the dealers will sell carpet to you.
- II. The Strategic Partner Agreement: The agreement between DPS and the Carpet Manufacturers/Mills. This agreement consists of a listing of the carpets made by them that the Trading Partner will sell to the authorized users and a budget installed price for each carpet. The budget(ing) installed price is simply an estimate by the manufacturer of what you should expect to pay per square yard to have a particular carpet installed. This price does not include other costs such as floor repair, cove base, etc. This price is to help you sort out what carpets fall within your budget. Purchase Orders must **not** be issued to the Carpet Manufacturers/Mills.

- III.** Instructions for using this agreement. (This agreement consists of several files located on the eVA State Contracts webpage. Although each Trading Partner has an assigned Contract Number, the documents under each Contract Number are the same.
- A. All carpet will be bought on an individual job basis, "spot purchase".
 - B. You are authorized to use any procurement method allowed by regulation/law.
 - C. Check to see what Trading Partners sell in your city/county by reviewing the Trading Partner Service Areas document.
 - D. Check to see what Carpet Mills/Mfgs. (Strategic Partners) they represent by reviewing the Trading Partners by Mills document.
 - E. Contact the Trading Partner to obtain carpet choices and/or samples.
 - F. Select carpets, which fall within your budget and then compare them for suitability.
 - G. Prepare your solicitation and cite both agreements. Your award should be based on a lump sum for the entire carpeting job. This does not include non-carpet related items such as linoleum, etc. Additional Special Terms and Conditions unique to each job may be included such as bid bond, performance bond or special delivery instructions.
 - H. If your procurement meets or exceeds the single quote threshold (\$5,000) and up to \$50,000., you are required to solicit the proper number of partners as prescribed by regulation.
- IV.**
- A. 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 agreement is authorized for use by localities, Virginia cities, counties, town and political subdivisions, then these entities must place their **orders through eVA. Trading Partner Vendors shall not accept purchase orders against this contract that are not placed through eVA.**
 - B. The applicable Trading Partner Agreement Contract Number (**see page 4**) must be shown on each purchase order placed in eVA.
 - C. Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia City, county, town or political subdivision.
 - D. Any complaint as to quality, faulty or delinquent delivery, or violation of agreement provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor. Complaint forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available at www.forms.dgs.virginia.gov
 - E. See Special Terms and Conditions for SPCC requirements.
 - F. Contractor is required to provide a carpet installation certificate as depicted on Attachment A.

2. TRADING PARTNER /VENDOR CONTACT LIST

Companies below will provide estimates and do installation of new carpets

VENDOR NAME (SWaM Status)	eVA Vendor ID #	CONTACT INFORMATION
B & L Floorcovering (s)	E45595	Contact Person Mary Warriner or Lenny Allese Address 4113 W. Clay Street, Henrico VA Phone 23230 Fax 804-213-3808 Email 804-213-0838_ mary@blfloorco
Carpet Village, Inc. (s)	C13503	Contact Person Stefanie R. Wilson Address 4142 Melrose Ave, Suite 8, Roanoke Phone VA 24017 Fax 540-265-7352 Email 540-265-7957 swilson@carpet-village.com
Cherry Carpet (s)	C12176	Contact Person Ross Cherry Address 2915 London Blvd. Portsmouth VA Phone 23707 Fax 757-397-5811 Email 757-397-6307
Commonwealth Floors, Inc. (sw)	E1991	Contact Person Shelia Ruff Arrington Address 5503 International Trade Drive, Phone Richmond, VA 23231 Fax 804-644-5072 Email 804-644-5075 sarrington@commonwealthfloors.com
DMA & ASSOCIATES (s)	E19461	Contact Person Corey Smith Address 4216 Eubank Rd. Richmond, VA 23231 Phone Fax 804-266-6464 Email 804-264-8517 csmith@dmafloors.com
Floor Fashions of VA, Inc. (s)	C12841	Contact Person Wayne Ryder Address 2422 Richmond Road, Charlottesville Phone VA 22911 Fax 434-296-7744 Email 434-984-3576 wryder@floor-fashions.net
Hodgman's Inc. (s)	C12681	Contact Person Thomas (Beau) Bruffy Address 4565 Carolina Ave. Bldg. G, Richmond, VA Phone 23222 Fax 804-550-1602 Email 804-550-3404 bbruffy@hodgmansi
Lockwood's Carpet, Inc. (sw)	C13986	Contact Person Brian Clements Address 7012 George Wash. Mem. Hwy., Gloucester Phone VA 23061 Fax 804-693-2372 Email 804-693-9532 Fuzzystuff2@lockwoodscarpetsin

Sully Carpet & Interiors (sm)	E25	Contact Person Address Phone Fax Email	Farhad Rashedi 13970 Metrotech Drive, Chantilly VA 20151 703-222-0808 703-222-9836 farhad@sullyinteriors.com
Superior Floor Covering, Inc. (s)	C13946	Contact Person Address Phone Fax Email	Roscoe A. McGhee PO Box 9045, Richmond VA 23225 804-745-7979 804-674-1981 Sfc1@sfcincva.com
<i>t/a</i> The Carpet House (Southside Carpet House) (s)	E17185	Contact Person Address Phone Fax Email	JoAnn C. Showalter 2690-A West Third St., Farmville VA 23901 434-392-6000 434-392-2221 Thecarpethouse@kinex.net
The Ceiling & Floor Shop, Inc. (s)	E11781	Contact Person Address Phone Fax Email	Michael Simpson 105 Keystone Place, Charlottesville, VA 22902 434-971-9999 434-977-0845 msimpson@ceilingandfloor.com
The Floor Show, Inc. (s)	C13291	Contact Person Address Phone Fax Email	Wayne DeWitt 20695 Timberlake Road, Lynchburg VA 24502 434-237-6233 434-239-9768 wdewitt@floorshow.net
Tile & Terrazzo, LLC. (s)	C16416	Contact Person Address Phone Fax Email	David E. Russell 1000 Obici Industrial Blvd., Suffolk VA 23434 757-923-9100, 800-296-8453 757-923-9400 derussell@tileandterrazzo.com
<i>d.b.a.</i> Walker's Carpets & Interiors (JLM Enterprises of VA) (s)	C15074	Contact Person Address Phone Fax Email	Jerry Mashaw, Jr. 8501 Brook Road, Glen Allen VA 23060 804-262-3636, 800-353-9149 804-262-0084 jay@walkerscarpets.com
W.C. Carpenter (sw)	C17867	Contact Person Address Phone Fax Email	Lisa Brittell 5890 Thurston Avenue, Virginia Beach VA 23455 757-460-1101 757-363-9579 lisa@wccarpenter.com
Whitt Carpet & Tile Services Inc. (sw)	E12044	Contact Person Address Phone Fax Email	Matt Poland . 3170 West Main St. Salem VA 24153 540-380-4697 540-380-4800 Matt@whittcarpet1.com

3. TRADING PARTNER /VENDORS AGREEMENT

- A. SCOPE OF AGREEMENT:** To establish terms and conditions under which multiple dealers (**Trading Partners**), who are VA DMBE certified as a Small Business, will sell carpet to the Authorized Users of this agreement, on as as-needed, as ordered “Spot Purchase” basis. The **Trading Partners** represent various Carpet Manufacturers/Mills listed on the Carpet Contract Agreement. The Authorized Users of this agreement must place purchase orders, through eVA, with a **Trading Partner** whose DMBE Small business certification is current and valid.
- B.** The *Strategic Partner Agreement* is an agreement between DPS and the Carpet Manufacturers/Mills. This agreement consists of a listing of the carpets made by them, that the **Trading Partners** will sell to the Authorized User and a budget installed price for each carpet. The budget(ing) installed price is simply an estimate by the carpet manufacturer of what the Authorized User(s) should expect to pay per square yard to have a particular carpet furnished and installed. This price does not include other costs such as floor repair, cove base, etc. Purchase Orders must not be issued to the Carpet Manufacturers/Mills on the Carpet Contract database, unless they are also listed as a **Trading Partner**.
- Trading partners are required to respond to requests for quotes, estimates, site visits and any solicitations issued whenever and wherever placed by those Authorized Users in your service area(s) for your products listed. Any Trading Partner who fails to comply with this requirement may be removed from Carpet Contract. Trading Partners must ensure that their service areas are correct and that they respond to all requests for quotes, bids, etc. received for that area. Trading Partners may not list service areas that they do not intend to service at any and all times. Trading Partners may not submit a “no bid” for any area they have listed in their service areas without a satisfactory justification submitted and approved by the DPS Contract Officer.
- C.** The Authorized Users may place orders under \$5,000, which is the single quote threshold, with a Trading Partner. If their procurement meets or exceeds the single quote threshold (\$5,000), they are required to solicit the proper number of DMBE Small Businesses as prescribed by regulation. This can be achieved by soliciting the proper number of Trading Partners listed on this Contract. In the event that there are not enough Trading Partners listed for their city/county to satisfy this requirement, they may solicit other Trading Partners not listed for their area. **This Contract Agreement shall not be used for total requirements over \$100,000.**
- D. DEFINITIONS:** As used in this agreement the following definitions apply.
- Contractors /vendors** shall mean any Carpet Dealer which has been awarded a contract as a Trading Partner pursuant to this agreement.
- Bid** shall mean a response to a solicitation issued pursuant to this agreement.
- Bidder(s)** shall mean any firm that submits a response to a solicitation issued pursuant to this agreement.
- Trading Partner (TP)** shall mean any firm that has duly executed this agreement with the COVA.
- Strategic Partner (SP)** shall mean the Manufacturers/Mills, represented by the TPs that have signed a separate COVA Strategic Partner Agreement and listed on this contract agreement attachments.
- Authorized Users** shall mean State agencies, other bodies permitted to place orders pursuant to this contract agreement.
- Bids, Quotes, Estimates and Solicitations** shall all mean the authorized and applicable procurement method used by the Authorized User to obtain pricing from the Trading Partners.
- E. APPLICANT QUALIFICATIONS:** Submissions will be accepted only from responsible commercial carpet dealers. A commercial dealer is a dealer that installs carpet in public buildings and business including college dormitories. The Commonwealth will use the following qualifications as part of its determination of applicant responsibility:
1. Applicant shall be an authorized dealer for the products of the manufacturer(s) listed in their attachment titled Trading Partners by Mill.
 2. Applicant shall be a licensed contractor in the specialty CIC Commercial Improvements, home improvements or other carpet installation venue.
 3. The Applicant must be eVA registered, a Virginia DMBE Certified Small Business and be registered with the State Corporation Commission.
- F. F.O.B DESTINATION:** All items delivered pursuant to this agreement shall be delivered F.O.B. destination.
- G. SITE VISITS:** Authorized Users may require mandatory site visits prior to submitting bids/offers. In the event that insufficient firms attend the mandatory site visit to insure adequate competition, the agency/political subdivision may invite additional firms to a site visit at a later date. The determination as to whether or not sufficient firms attended the mandatory site visit shall be at the sole discretion of the agency/political subdivision. In no event shall a firm which was specifically notified of the first mandatory site visit and did not attend the site visit be

invited to any later site visits which are arranged solely for the purpose of insuring adequate competition.

- H. STATE USE TAX:** The Department of Taxation has determined that permanently glued down carpet is subject to State use tax.
- I. SAMPLES FOR DISTRIBUTION TO AGENCIES:** Upon request, the Contractor or manufacturer shall furnish sample book of items awarded directly to the using agency or public body.
- J. SPECIFICATIONS:** Contractor shall be responsible for installation of carpet in accordance with the Virginia Uniform Statewide Building Code, the manufacturer's instructions and these specifications.
1. The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that may be utilized, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor shall be fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees. The contractor while on the job site shall have at least one employee whom is certified by the carpet manufacturer of the delivered carpet as qualified to install the specified carpet.
 2. Any damage to existing fixtures, utilities or finished surfaces resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's sole expense.
 3. A minimum of twenty-four (24) hour advanced notice shall be given to agency representative to allow for preparation of the work site and/or removal and relocation of furniture by agency personnel. If adequate notice is not given, contractor shall be responsible for any incurred expenses due to furniture movement.
 4. Carpet ordered for direct glue down shall be installed using manufacturer's recommended adhesive, trowel size and application rate. Seam sealer shall be used on all seams and butt joints and applied as per the manufacturer's recommendations.
 5. Carpet ordered for installation over padding shall be installed using proper pad adhesive and pad tape. Carpet shall be seamed using manufacturer's recommended seaming tape and all lengths over 12 feet shall be power stretched. All lengths over 30 feet shall be stretched by a senior power stretcher.
 6. Carpet ordered for double stick installations shall be installed using the carpet and pad manufacturer's recommended adhesives, trowel size and application rate. Seam sealer shall be used on all seams and butt joints and applied as per the manufacturer's recommendation.
 7. Carpet shall be laid according to recommendations of manufacturer. Carpet shall be laid flat, level without humps or ripples. Joints shall be subtle and imperceptible. All seams shall be trimmed in a neat and workmanlike manner.
 8. Finish strips of metal and metal/vinyl shall be a standard commercial quality and shall be installed with both edges tight against door frame. Edge of carpet and finish strips shall be located underneath the door when closed. Finish strips shall be installed where carpet abuts hard surface flooring.
 9. Carpet shall be securely attached to the floor in compliance with Americans with Disabilities Act.
 10. Installed carpet shall be free of spots, dirt or soil, tears and frayed or pulled tufts.
 11. Carpet shall be thoroughly vacuumed immediately after installation.
 12. All debris shall be removed from the premises unless the ordering agency authorizes otherwise.
 13. Contractor shall remove doors when necessary but will not be responsible for cutoff or reinstallation of the doors.
 14. Punch list items and/or corrections to installations shall be responded to within 10 days of notification and failure to do so may be cause to terminate the contract for default. Agencies may not withhold the total invoice amount awaiting repairs to be completed. The amount to be withheld will not exceed 5% of the invoiced amount for the areas awaiting repairs.
 15. For capital outlay installations, when required by the agency, the contractor may be required to work with the general

contractor and/or architect.

16. Any installation is subject to verification by State inspector or independent agent engaged to represent the State for actual yardage required by institution involved. Any installation consuming more than 3% over the number of square yards within a given area shall be supported by seaming diagram showing waste and submitted to the agency prior to invoicing. Center of door dimensions will be considered.
17. The carpet installer shall complete a Carpet Installation Certification (see Attachment A) as denoted herein upon satisfactory completion of each carpet installation. A copy of the certification shall be submitted with each Invoice with a copy to the Division of Purchases and Supply.
18. Upon completion of an installation job, a manufacturer's maintenance manual and/or cleaning instructions shall be supplied to the owner without cost to the ordering Agency. Dealers and manufacturers may be required to conduct training sessions for agency personnel on the care and cleaning of their carpet.
19. At the conclusion of the work, the Contractor shall demonstrate to the authorized owner's representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

K. INSTALLATION WARRANTY: Each installation shall be warranted by the installing Trading Partner for a minimum of five years after the date of acceptance. The installation shall warranty against defective materials, workmanship and performance. The Trading Partner hereby agrees to furnish, without cost to the COVA, all labor, materials and transportation both ways for replacement of all materials which are found to be defective or labor to affect the adjustment/repair of the carpeting during the warranty period. Warranty repairs shall be completed within five to ten days after notification.

L. Orders. Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia shall adhere to the following when using this contract:

- A. 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.
- B. The Trading Partner Contract Number must be shown on each purchase order and copy, each facsimile transmission, and on each invoice. Do not list the Master Agreement Number.
- C. Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia city, county, town or political subdivision.
- D. Any complaint as to quality, faulty or delinquent delivery, or violation of agreement provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor.
DPS Vendor Complaint Forms, by which to facilitate the notification of the contractor and this office of complaints, are available at <http://www.eva.virginia.gov> under the VENDOR tab under Vendor Resources.
- E. Contractor is required to provide a carpet installation certificate for each job performed under this agreement to the contracting officer as depicted on Attachment A.

M. TRADING PARTNER VENDORS REGISTRATION: If a contract for construction, removal, repair or improvement of a building or other real property is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is seven hundred and fifty thousand dollars (\$750,000) or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars (\$7,500) or more but less than one hundred and twenty thousand dollars (\$120,000), or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is between one hundred and fifty thousand dollars (\$150,000) and seven hundred and fifty thousand dollars (\$750,000) or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500), or if the contractor does less than \$150,000 in business in a 12-month period, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The board shall require a master tradesmen license as a condition of

licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The bidder/offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. _____ Specialty _____
Licensed Class B Virginia Contractor No. _____ Specialty _____
Licensed Class C Virginia Contractor No. _____ Specialty _____

If the bidder shall fail to provide this information on his bid or on the envelope containing the bid and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid will not be considered.

If a bidder shall fail to obtain the required license prior to submission of his bid, the bid shall not be considered.

Should you have a change in the type of Contractors License which you hold (A, B, or C) you will need to notify this office. The type of license required will be dictated by the estimated cost for each individual project.

N. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this agreement, I certify that this firm/individual and subcontractor are properly licensed for providing the goods/services specified.

Contractor Name: _____ Subcontractor Name: _____
License # _____ Type _____

O. The Vendor must comply with the following [General](#) and [Special Terms and Conditions](#).

4. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “Vendors Manual” on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

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

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material

cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

a. A contractor awarded a contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

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

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

L. **QUALIFICATIONS OF (BIDDERS/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) submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION**: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT**: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. Not applicable – See Standard T&Cs - below

- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

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

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

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

<u>Profession/Service</u>	<u>Limits</u>
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.)	\$1,925,000 per occurrence, \$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:

July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <i>Code of Virginia</i> . Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

U. Not applicable

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

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

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

- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

- 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.
- 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:

- For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
 - DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
 - DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.

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

(i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.

(ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

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

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **SET-ASIDES.** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offers shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offers shall state bid/offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

5. SPECIAL TERMS AND CONDITIONS

1. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to the Commonwealth or Authorized User will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth or Authorized User has purchased or uses any of its products or services, and the contractor shall not include the Commonwealth or Authorized User in any client list in advertising and promotional materials.
2. 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.
3. ASBESTOS: Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.
4. CONTRACTOR'S TITLE TO MATERIALS: No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
5. CANCELLATION OF CONTRACT AGREEMENT: The purchasing agency reserves the right to cancel and terminate any resulting agreement, 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.
6. EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete delivery and ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.
7. FINAL INSPECTION: At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
8. INSPECTION OF JOB SITE: My signature on this any solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
9. INSTALLATION: All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

provided with the bid for each chemical and/or compound offered. Failure on the part of the bidder to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

11. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are “Hazardous Substances” as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or “Pesticides” as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.
12. **PRODUCT INFORMATION:** The bidder shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with any requested bid to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.
13. **SUBCONTRACTS:** **No portion of the work shall be subcontracted without prior written consent of the DPS Contract Officer and the purchasing agency.** In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
14. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this agreement shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods 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. A copy of this warranty should be furnished to the Commonwealth with all bids.
15. **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.
16. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in multiple purchase orders with the eVA transaction fee specified below assessed *for each order*.
 - a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 thru July 1, 2011, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.
 - c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at \$1,500 per order.
 - d. For orders issued July 1, 2012 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

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

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and

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.

17. CONTINUITY OF SERVICES:

- a) Contractor recognizes that the services provided under this Contract are vital to the Commonwealth and must be continued without interruption and that, upon contract expiration or termination, a successor, either the Commonwealth or another contractor, must continue the Services provided herein. **Therefore, the Contractor hereby agrees:**
 - (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
 - (ii) To make all Commonwealth-owned facilities, equipment, and data available to any successor at an appropriate time to be determined in cooperation with the DGS Contracting Officer, and prior to the expiration or termination of the contract to facilitate transition to any successor; and
 - (iii) That the DGS/DPS Contracting Officer shall have final authority to resolve any disputes related to the transition of the contract from the Contractor to any 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 or is terminated, and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
- c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration or termination that results 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.

18. CONTRACTOR ACCESS TO COMMONWEALTH LOCATIONS: The Commonwealth shall grant to Contractor personnel such access to the Commonwealth locations as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth, or the Authorized User submitting an Order under this Agreement, would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

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

20. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2- 4311.2 subsection B, a bidder organized or authorized to transact business in the Commonwealth

pursuant to Title 13.1 or Title 50 is required to include in its bid, the identification number issued to it by the State Corporation Commission (SCC). Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid, a statement describing why the bidder 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 not definitive, and the Commonwealth's use and acceptance of such
for or its acceptance of Contractor's statement describing why the bidder 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.

21. MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC) / PAYMENT TERMS/OPTIONS: Contract Users pay by check, electronic funds transfer (ETF), or with the Commonwealth's authorized procurement card. Standard payment terms are net 30 days from products delivery or properly executed invoice receipt. Purchasing charge cards offer State agencies and Institutions the opportunity to streamline their procedures for procuring and paying for small dollar goods and services. Vendors responding to this solicitation should note that acceptance of payment by purchase card is Mandatory unless waived by DPS) within 90 days of contract award. For current contracts where acceptance of the purchasing card is not in effect, Contractors must (unless waived by DPS) accept purchase card payments within 90 days of contract award.

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

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

Level One (1): Vendors provide basic credit card purchase information, including but not limited to ITEMS A through D, as listed below. By passing Level 1 "Basic Data", the vendor has a standard interchange cost.

Level Two (2): Vendors provide purchase information, including, but not limited to ITEMS A through F, as listed below. By passing level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accepts the current SPCC vendor, Bank of America Visa card.

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

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

22. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the

Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

23. RENEWAL OF AGREEMENT: The original agreement is renewable for Four (4) one-year periods. **One (1) one-year renewal remains.** The decision to exercise a renewal option will be made by the DPS Contract Officer approximately 120 days in advance of the expiration date of the current term.
24. DELIVERY: After receipt of order, unless a longer delivery period is specified on purchase order, delivery and installation shall be effected within a reasonably prompt time frame but in no event will the time frame be longer than the delivery period specified on price sheet for the product ordered.
25. DELIVERY AND STORAGE: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Owner will not assume any responsibility for receiving these shipments. Contractor shall check with the Owner and make necessary arrangements for security and storage space in the building during installation.
26. FINANCIAL STATEMENT: The ordering entity reserves the right to require the Vendor to supply the latest independently audited financial statement to DGS/DPS.
27. 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.
28. CONTRACTUAL DISPUTES: Shall be handled in accordance with the Vendors Manual.

29. **PURCHASE VOLUME REPORTS:** The Contractor shall furnish the Division of Purchases and Supply (DPS) a statement covering the total dollar volume of purchases made under this contract and a report of the total number of each contract item delivered under this contract on an annual basis and approximately 90 days prior to the contract expiration. The report shall be provided electronically in Excel, formatted similar to the example below and be itemized to include the minimum purchase information listed. There shall be no exceptions from this requirement without a written request approved by the Contract Officer.

Example: Purchase Volume Report

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

6. STRATEGIC PARTNER AGREEMENT with
MANUFACTURERS/MILLS

I. STRATEGIC PARTNER REQUIREMENTS:

- A. The Strategic Partner shall be an established manufacturer of commercial carpet. Commercial Carpet shall be carpet manufactured for use in public buildings and businesses including college dormitories. Carpet manufactured for use in private or personal residences is not covered by this definition.
- B. The Strategic Partner shall have it's own manufacturing facility; contracted or commissioned tufting is not acceptable.
- C. The Strategic Partner shall have full time employees and qualified technicians (a Trading Partner cannot be named as a distributor) located in or adjacent to the state of Virginia to assist agencies and or the dealers as needed.
- D. The Strategic Partner shall possess a fully integrated mill with tufting, weaving, shearing dyeing (if not pre-dyed by yarn manufacturer), and apply backings (excluding enhancer) in the Strategic Partner's owned facilities. If the Strategic Partner does not have the capacity to do all of its space dyeing in house, they may contract out a limited amount to a dye house approved by the manufacturer of the yarn.
- E. The Strategic Partner warrants all carpet offered and provided pursuant to this agreement meets all specifications listed in the manufacturer's specification sheets. Further, all carpet samples provided by the manufacturer in response to this agreement are true and correct samples of the products which will be provided to any authorized user of this agreement.

II. CARPETS INCLUDED IN THIS AGREEMENT: Using the attached list each carpet you want included under this agreement by name and include a budget installed per yard price for each carpet. This price does not dictate either the Strategic Partner's sale price to the Trading Partner nor does it dictate the Trading Partner's bid/offer price. This pricing must be realistic, as the authorized users of this agreement will be using it for budgetary planning in determining which carpets they will consider prior to the solicitation process. If your company is on the state carpet agreement you should use this file to update your list.

III. CARPET SPECIFICATIONS, SAMPLES AND WARRANTEES: The Strategic Partner agrees to provide upon request the following: Carpet samples, warrantees and manufacturer specifications to all trading partners and authorized users.

IV. 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.

ATTACHMENT A
(for Vendors use)

COMMONWEALTH OF VIRGINIA
CARPET INSTALLATION CERTIFICATE

** Vendor must complete and submit form to the Procuring Agency for every Purchase Order issued under this contract **

AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION	
LOCATION OF INSTALLATION (City/County)	
DATE OF INSTALLATION	
NAME OF CARPET AND PATTERN	
CARPET MANUFACTURER	
TYPE OF BACKING	
AGENCY ORDER NO.	
CARPET SQUARE YARDAGE INSTALLED	
TRADING PARTNER	
NAME OF INSTALLER	
COST OF CARPET LESS INSTALLATION	\$

I, THE UNDERSIGNED DO HEREBY CERTIFY THAT THE ABOVE LISTED DATA IS COMPLETE AND FACTUAL TO THE BEST OF MY KNOWLEDGE.FURTHERMORE, I HEREBY CERTIFY THAT THE ABOVE DESCRIBED CARPET INSTALLATION WAS INSTALLED BY COMPETENT WORKERS UNDER MY DIRECT SUPERVISION AND THAT SAID INSTALLATION HAS BEEN INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S PRINTED INSTRUCTIONS WHICH FULLY COMPLIES WITH THE REQUIREMENTS OF THE TRADING PARTNER AGREEMENT.

DATE: _____

SIGNATURE: _____

TITLE: _____

DISTRIBUTION OF COPIES: Original - Procuring Agency
Copy - DPS Contract Officer **only** upon their request.

NOTE: THIS IS NOT A VOLUME REPORT