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

Notice of Contract Award

CONTRACT # E194-72842

Contract Title: Hazardous, Solid & Pharmaceutical Waste Management Disposal Services

1	DATE:	October 10, 2013
2	CONTRACT PERIOD:	October 10, 2013-October 9, 2018
3	SUPERCEDES:	E194-342, 343, 344, 345, 346 & 383
4	AUTHORIZED USERS:	Commonwealth of VA Agencies and Public Bodies
5	CONTRACTOR'S eVA VENDOR ID#:	VS0000102708
6	**CONTRACTOR / VENDOR**	Triumvirate Environmental, Inc.
7	**CONTRACTOR CONTACT**	Vaughn Harry
8	TERMS	Net 30
9	DELIVERY	14 Days
10	F.O.B.	Destination
11	CONTRACT PRICES	See Service Rate Schedule Summary
12	DPS CONTRACT OFFICER	Name: Katherine Bosdell Phone: 804-786-2397 Email: katherine.bosdell@dgs.virginia.gov

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

AUTHORIZED USERS: This contract is the result of a competitive negotiation program and is Optional Use for all STATE AGENCIES (unless otherwise indicated in item 4 above) and other public bodies and entities authorized to use the contract by the *Code of Virginia* § 2.2-1120(D).

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.

TABLE OF CONTENTS

SECTION	DESCRIPTION
1	CONTRACTOR/ VENDOR INFORMATION
2	GENERAL INSTRUCTIONS
3	ADDITIONAL INFORMATION
4	SCOPE OF WORK / GENERAL & TECHNICAL SPECIFICATIONS
5	COMMODITY INFORMATION & PRICING
6	GENERAL TERMS AND CONDITIONS
7	SPECIAL TERMS AND CONDITIONS

1. CONTRACTOR / VENDOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address	Contact Information
Triumvirate Environmental, Inc.	**VS0000102708**	**1500 Carbon Avenue Baltimore, MD 21226**	**Vaughan Harry Phone 347-907-4417 vharry@triumvirate.com www.triumvirate.com**

2. GENERAL INSTRUCTIONS

1. Ordering Method: Unless otherwise instructed or exempted by DPS, all departments, institutions and agencies of the Commonwealth of Virginia using this contract must order items by issuing purchase orders through eVA. Orders placed against the contract, which are not processed through eVA, are not in compliance with the terms and conditions of this contract and Contractors receiving such non-eVA orders shall request the Ordering Agency to resubmit the order through eVA. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor. If this contract is authorized for use by localities, Virginia cities, counties, town and political subdivisions, they should place all purchase orders through eVA or eVA Lite.

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 contract vendor's invoice is the responsibility of the receiving entity.

4. Complaints: Any complaint resulting from 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 www.eva.virginia.gov (Click on the Buyer tab, then on "Procurement Complaint Form").

5. Changes: Any changes whether for increases or decreases in pricing, delivery terms or additional options must be approved by the Division of Purchases and Supply in advance of issuance of the purchase order by the ordering agency. Disputes between the ordering agency and the contract vendor will be resolved in accordance with the terms of the contract and any change orders/renewals unless prior approval was granted by DPS.

6. See Additional Information section below.

3. ADDITIONAL INFORMATION

Instructions on Using Hazardous, Solid & Pharmaceutical Waste Management Disposal Services Contracts

Contractors (in alphabetical order):

- Clean Harbors Environmental Services, Inc.
- PSC Environmental Services, L.L.C.
- Triumvirate Environmental, Inc.
- Veolia ES Technical Solutions, L.L.C.

Contract Documents:

- Master Agreement (a separate contract for each contractor)
- Service Rate Schedule Summary with pricing, disposal and other information
- Contractor Contract Modification Request Form (to add new TSDF's and waste streams only)

Placing Orders:

- Inventory the waste items for disposal
- Find the waste items on the Service Rate Schedule Summary (SRS) Table of Contents. Contact Contractor if you need assistance in determining the waste type.
- **If the waste item is not listed in the SRS, it <u>must be added</u> to the Contract by DPS prior to Contractor pickup. The Contractor must submit a completed Contractor Contract Modification Request Form to the DPS Contract Officer to request adding items to the contract that are not listed on the SRS.**
- The SRS has one waste item per page with the Contractors' pricing for that specific waste item. Where there is no price listed the Contractor does not provide disposal services for the waste item listed on the page.
- The agency must directly contact the Contractor to arrange a pick up.
- Create a non-catalog eVA order after the waste item has been identified in the SRS. In the eVA order Item Description box, you <u>must</u> include the Contract Rate ID for the waste item. The Contract Rate ID is located in the upper left corner of the SRS page (i.e., the Contract Rate ID for "Paint, Oil Based" is L&G-2).
- The Contractor shall pick up waste items no later than fourteen (14) days after initial contact by the agency unless the Contractor and agency mutually agreed to an alternate date.

Follow-up:

- The Contractor shall provide a Hazardous Waste Manifest to the agency within 35 days (or 60 days if applicable) of waste pick up indicating that the material was received by the treatment, storage or disposal facility (TSDF).
- The Contractor shall provide a Certificate of Treatment, Disposal or Recycling to the agency within 30 days of final waste recycling or disposal indicating that the material was properly disposed of or treated unless an alternate format is mutually agreed to in writing by the agency and the Contractor **<u>prior to</u>** waste pick up.
- The final treatment or disposal of the waste must occur within 180 days from the date of pickup from the agency.

4. SCOPE OF WORK/GENERAL & TECHNICAL SPECIFICATIONS

The Contractor shall furnish all labor, supervision, equipment, tools, labels, and materials, as necessary, to provide Hazardous, Solid & Pharmaceutical Waste Management Disposal Services for Commonwealth of Virginia agencies and other public bodies on an "as needed' basis in accordance with this contract and all appropriate federal, state and local laws and regulations. This contract includes services to provide collection, transportation, disposal and recycling of wastes regulated under the RCRA Subtitle C (hazardous wastes), special wastes under RCRA Subtitle D (asbestos containing waste materials, ACM and RACM, certain PCB contaminated wastes, and tires), TSCA regulated wastes, CSA regulated wastes (DEA controlled substances) and hazardous waste pharmaceuticals. The CSA encompasses the regulation of DEA controlled drugs. Hazardous pharmaceutical waste disposal includes many distinct waste streams that reflect the complexity and diversity of the chemicals that comprise pharmaceuticals. Appropriate disposal and management services combine regulatory compliance and best management practices with waste minimization to safeguard human health and the environment while minimizing risk.

The contract includes hazardous and solid waste and materials that are not specifically regulated that it is in the best interest of the Commonwealth to dispose of under the terms of the contract. The term "waste" includes materials regulated under the above named federal regulations and their corresponding equivalent Virginia regulations as well as certain non-regulated wastes. It is the intent of the Commonwealth to include Regulated Medical Waste disposal and recycling services as defined herein.

1. GENERAL:

The Contractor shall package, pick-up, and transport hazardous, solid and pharmaceutical waste and materials to an authorized Recycling, Treatment, Storage, or Disposal Facility **(**RTSDF) which shall include but is not limited to labpacking, waste identification/characterization and any other waste material services on an "as needed" basis. These services shall be performed in compliance with all applicable federal (i.e., US EPA, US DOT and OSHA), state (i.e., Virginia Departments of Environmental Quality and Labor), and local regulatory requirements.

A. Services shall include preparation and management of waste/materials shipping documentation; labeling for transport, preparation of waste including packaging, labeling, and placarding; sampling and field and/or laboratory analytical testing of wastes and materials; and management of disposal/final disposition certificates.

B. The Contractor shall recycle, treat, store, and/or dispose of materials only at a facility that maintains all applicable authorizations to accept and manage the wastes in the specified manner. At no time shall a waste or material be transported to an unauthorized facility. The Contractor shall notify the Department of General Services/Division of Purchases and Supply (DGS/DPS) contract officer whenever a transfer facility is added.

All waste shall only be transported, accumulated, stored, recycled, destroyed, or disposed of within the US. If there are no management options in the US for a specific waste stream and the Contractor must ship the waste stream outside the US for proper management (i.e., transporting dioxin waste to Canada), the Contractor shall obtain the waste generator's written approval prior to shipping this stream from the waste generator's site. In obtaining prior written approval the Contractor shall provide full disclosure to the Commonwealth of any and all intermediate transporters as well as the final destination facility name and location, applicable authorizations, final disposition for the waste stream (i.e., land disposal, reclamation, etc.) and other requested information to ensure that the items shall be processed and/or disposed of in a manner consistent

with the applicable facility's authorizations. When exporting hazardous waste, the Contractor shall maintain full compliance of all applicable laws and regulations governed by the regulatory entity overseeing hazardous waste management in the host country. Triumvirate will provide any and all information to assist the Commonwealth in auditing facilities outside of the US. Triumvirate will pay up to 25% of travel expenses for no more than two (2) Commonwealth of VA employees approved by DGS/DPS to conduct an audit on facilities outside of the US.

C. The Contractor is solely responsible for any and all spills or leaks occurring during the performance of this contract resulting from or contributed to by the actions of its agents, employees, or subcontractors. The contractor shall demonstrate its ability to effectively respond to spill incidents, including an expedited public notification procedure to warn those persons potentially affected by the spill. The contractor should have a standard operating procedure in place that ensures public safety during a spill. The Contractor agrees to clean such spills or leaks to the satisfaction of the Commonwealth and in a manner that complies with applicable federal, state, and local laws, regulations, and requirements. The cleanup will take place at no cost to the Commonwealth.

Immediately upon discovery, the contractor shall report all such spills or leaks meeting the reportable quantity thresholds either pursuant to CERCLA or within the US DOT regulations, as applicable, as required by law and then to the agency from which the waste was collected, and to the DGS/DPS contract officer. A written follow-up report shall be submitted to the agency and DGS/DPS contract officer no later than two (2) business days after the initial notification.

D. The Contractor shall pick-up materials to be disposed/recycled no later than fourteen (14) days after initial contact by the agency, unless the agency and the Contractor mutually agree to an alternate date.

E. The Contractor shall furnish all labor, transportation, tools, materials, equipment, labels and warning signs, required for adequate protection of materials during the packaging, transporting and disposal/recycling activities. All such requirements must comply with US EPA, US DOT and other applicable regulatory requirements.

F. All packaging and handling of the materials shall be accomplished in a professional manner in conformance with US EPA, US DOT and other applicable regulatory standards. Contractor shall use appropriately sized containers to minimize the cost with no extra containers packaged at the site. Segregation and packaging procedures required of the Commonwealth by the Contractor shall not be substantially more restrictive than required by 49 CFR, 40 CFR or the state equivalents, other than segregation required for use of different disposal technologies. All materials shall be removed from the agency immediately after completion of the packaging and preparation of the manifest, unless the agency and the Contractor mutually agree to an alternate removal timeframe. The Commonwealth reserves the right to stop the packaging and/or movement of the materials when the work is not being accomplished in accordance with the contract.

G. The Contractor shall possess all authorizations required by all applicable federal, state, and local agencies to accomplish hazardous, solid and pharmaceutical waste management disposal and materials collection, transport, disposal and recycling services. Contractor shall have a current US EPA ID number, US DOT Hazardous Materials Registration (if applicable) and a Virginia Hazardous Waste Transporter Permit Number. The Commonwealth reserves the right to approve and/or audit the Contractor's transporters and/or final disposal locations. Audit information or publicly available compliance information may lead the Commonwealth to determine that a Contractor's transporter or disposal location is not in the best interest of the Commonwealth. If this is the case, a mutually agreeable alternative transporter and/or disposal location will be selected and the contract documentation amended.

H. Order Placement: Agencies must use the eVA Internet electronic procurement solution for placing orders with the Contractor. The Contractor must invoice the agency that placed the order and include Contract IDs on all invoices for agency verification purposes and to facilitate timely payment. Information about eVA is available at the DGS/DPS website at www.eva.virginia.gov.

I. The Commonwealth will conduct hazardous, solid and pharmaceutical waste determination and materials identification characterization at its own expense; or it may request the Contractor to conduct sampling and analytical testing in compliance with RCRA and will pay the Contractor a predetermined fee for this service according to the Service Rate Summary. Any additional waste characterization analyses required by the Contractor shall be at the Contractor's expense. The Commonwealth may request other analytical services beyond the scope of waste characterization at predetermined fees according to the Service Rate Summary.

J. The Commonwealth acknowledges that during certain situations, in which the Contractor performs specific services regarding RCRA Subtitle C regulated wastes, the Contractor may incur the status of co-generator, at which time the Contractor and the Commonwealth may be jointly and severally liable for the proper management of these wastes. For these specific instances, where the two parties may be considered co-generators of RCRA Subtitle C regulated waste, the Commonwealth desires to establish a mutual agreement via this contract that the Contractor shall assume and perform the duties of generator on behalf of the Commonwealth. Prior to assuming and performing the generator duties, the Contractor must provide written notification to the Commonwealth of proposed activities and allow sufficient time, not less than fifteen (15) days, for the Commonwealth to provide a written response.

K. In all other instances regarding RCRA Subtitle C regulated wastes in which the Contractor may not be considered a co-generator of the waste(s) in question, the Commonwealth will maintain sole responsibility as the generator.

L. The Commonwealth fully acknowledges responsibilities as a generator of RCRA Subtitle C regulated wastes and reserves the right to seek recourse in the form of monetary or associated relevant compensation from the Contractor in the event of regulatory or other potentially deleterious action imposed against the Commonwealth for improper waste management arising from the activities outlined in this contract and performed by the Contractor.

2. SAMPLING:

A. Services requested by the Commonwealth may include "sampling" of specific waste streams and materials found in tanks, drums, containers, etc., to include but not to be limited to identification of petroleum products, hazardous/contaminated materials, and constituents or wastes.

B. Sample analysis, when required shall be performed using approved methods by qualified personnel at a laboratory that maintains a Quality Assurance (QA) and Quality Control (QC) program accepted by federal and state agencies for constituents or waste types analyzed.

3. DISPOSAL AND RECYCLING DOCUMENTATION:

A. Hazardous Waste Determination Documentation is all documentation utilized to conduct waste determination including but not limited to process flow diagrams, Material Safety Data Sheets (MSDS), other process knowledge documentation, sampling protocol, Chain of Custody forms, and laboratory reports containing sample analytical data with accompanying QA/QC data.

B. Land Disposal Restriction Determination and Notification, if applicable.

C. Hazardous Waste Manifests, if applicable and other shipping documentation.

D. Contractor is required to submit a certificate or statement that waste material was recycled in accordance with all applicable federal, state and local laws, regulations, and requirements. The certificate or statement shall include the:

1. Date the waste material was recycled
2. Address of the facility which completed the recycling
3. Exact manner of recycling (use of US EPA Method Management Codes is preferable)
4. Quantity of the waste material recycled

E. See below in Section 4.Transportation for more disposal documentation information.

4. TRANSPORTATION:

Transportation of hazardous, solid and pharmaceutical waste materials to the RTSDF from the Commonwealth shall:

A. Utilize US DOT approved packaging, packing materials, labels and placards.

B. Include each unique container identification number on the packing list.

C. Load packed drums for transport in accordance with all federal and state rules, regulations and guidelines applicable to the type of waste shipped.

D. Notify the agency requesting the waste disposal services within thirty-five (35) days of shipment from the Commonwealth that the waste has been received by the RTSDF via the appropriate waste manifest or shipping paper.

E. Manage RCRA Subtitle C regulated waste shipments hazardous waste manifest in full compliance with applicable regulations. At a minimum Contractor shall provide a copy of the completed hazardous waste manifest with the handwritten signature of the owner/operator of the designated RTSDF within thirty-five (35) days [or sixty (60) days if applicable] of shipment from the Commonwealth indicating that the waste was received. For all other hazardous waste and material shipments, tracking and notification must be conducted according to applicable regulations with determinations made on a case-by-case basis between the requesting Commonwealth entity and the Contractor.

F. The Contractor shall provide to the agency a Certificate of Treatment, Disposal or Recycling within 30 days of final waste recycling or disposal indicating that the material was properly disposed of or treated unless an alternate format is mutually agreed to in writing by the agency and the Contractor **prior to** waste pick up. The final treatment or disposal of the waste must occur within 180 days from the date of shipment from the agency requesting the waste disposal services. Upon request by the Commonwealth, copies of all applicable authorizations and licenses(s) shall be submitted by the Contractor, which shall include but not limited, to:

1. US EPA Authorization Numbers;
2. State Facility Permit/Authorization Number(s);
3. Treatment Operating Description State Incineration/Treatment.

5. WASTE REPORTS:

Acquisition, completion, and proper submission of all required paperwork (e.g., manifests, land disposal restriction notifications, certificates of disposal etc.) shall be performed by the Contractor including but, not limited to the following:

A. Contractor shall accurately complete the appropriate portions of the waste manifest or shipping paper as requested by the Commonwealth and shall forward the form to the appropriate requesting agency. If so requested by an agency, the Contractor may sign Item 16 of the Offeror's Certification of a hazardous waste manifest. The Contractor's 24/7 toll-free disaster/emergency number should be on the Contractor's manifests. The Contractor shall subsequently transfer the Commonwealth wastes for treatment, recycling or destruction.

B. Upon request by an agency, the Contractor should complete the Biennial EPA Hazardous Waste report for any RCRA Subtitle C waste service that was invoiced by the Contractor. The Biennial EPA Hazardous Waste report should be submitted to the agency at least three (3) weeks before the report is due to DEQ. At no time will the Biennial EPA Hazardous Waste Report Certification be signed by any person other than the generator or an authorized designee of the generator.

C. Contractor should provide customized reports as requested by an agency and may invoice the agency for the customized reports.

6. CONTRACTOR PERSONNEL:

A. The Contractor should be capable of supplying personnel (e.g., field supervisors/lead chemists, field chemists, field technicians, etc.) to pack drums.

B. All Contractor personnel performing services under this contract (e.g., field supervisors/lead chemists, field chemists, field technicians, etc.) shall be knowledgeable in handling of hazardous, solid and pharmaceutical waste and materials and shall submit evidence of all required federal, state and local training and certifications upon request by the Commonwealth.

C. The Contractor should utilize a lead individual experienced in providing labpack services.

7. OVERNIGHT PER DIEM: If during pick-up or delivery, the Contractor's personnel (e.g., drivers, chemists, technicians, etc.) are required through some fault of the Commonwealth to stay overnight (e.g., supplies are not readily available at the site), the Commonwealth may reimburse the Contractor's per-diem expenses (i.e., lodging and meals) in accordance with the Commonwealth prevailing State Per Diem rates effective at the time of the pick-up or delivery, not to exceed $100 per person per day. If the Contractor's personnel are required to stay overnight because of the nature of the job (e.g., a spill during pick-up, an illness, late start from originating site, vehicle breakdown or other such circumstances), the Contractor, not the Commonwealth, shall be responsible for all of the Contractor's personnel per-diem expenses.

8. Contractor should advise the Commonwealth of environmentally safe waste disposal options.

9. Contractor should seek to reduce the Commonwealth's long-term liability whenever possible.

10. Contractor should advise the Commonwealth of any current and forthcoming economical alternatives for the disposal and/or recycling of hazardous, solid and pharmaceutical waste materials.

11. At all times where and when feasible, the Commonwealth's preferred method for waste management is recycling. Triumvirate will use land disposal with the Commonwealth's written permission only after all other possible legal options (i.e., recycling, incinerating, treating, etc.) have been eliminated from consideration.

12. The Contractor should consider any hazardous waste that becomes newly regulated under applicable federal and state rules, regulations and guidelines to be included in this contract.

13. The Commonwealth and the Contractor may mutually agree to add waste that is not specifically designated under this contract through a written Contractor Contract Modification Request Form.

14. This contract includes collection, transportation, disposal and recycling services for wastes regulated under:

1. RCRA Subtitle C (Hazardous, Solid and Pharmaceutical waste materials);
2. RCRA Subtitle D (asbestos containing waste materials, ACM and RACM, certain PCB contaminated wastes and tires);
3. TSCA regulated wastes and;
4. CSA regulated wastes (controlled substance pharmacological wastes).

15. Triumvirate will provide full access to their online system for agencies with online accounts to track transported waste, and view manifests and invoices. The agency should contact the Contractor for information on user online software training.

Contractor can provide on-site hazardous, solid and pharmaceutical waste disposal management and recycling operations training to Commonwealth personnel and those working on behalf of the Commonwealth. The agency should contact the Contractor for information on the availability of training on the following:

1. Emergency response;
2. Bulking operations;
3. Characterizing unknown substances;
4. Labpacking;
5. Field Service and;
6. Cylinder handling.

16. The Contractor is <u>not</u> required to provide hazardous, solid and pharmaceutical waste disposal services immediately before, during, or after natural and man-made disasters and emergencies.

17. **<u>WASTE CONFORMANCE</u>**: All waste to be removed from Commonwealth sites will conform to the description and specifications on the Waste Profile provided by the Commonwealth to the Contractor prior to job execution. The Waste Profile will be incorporated into and become a part of this agreement once accepted by the Contractor. The Contractor may, but is not obligated to, inspect the waste prior to acceptance for transport which may include obtaining an analysis of representative samples furnished by the Commonwealth. After removal from the site, if the waste is discovered to be non-conforming, the Contractor may revoke in writing its acceptance of the waste and provide documentation proving, to the Commonwealth's satisfaction, that the waste materials are non-conforming. The revocation of acceptance will be effective immediately upon the Commonwealth's receipt of written notice. Within a reasonable time, not to exceed 15 days of receipt of the notification by the Commonwealth, the Contractor shall prepare for transportation and will return to the Commonwealth any non-conforming waste material unless the parties agree to an alternative lawful manner of disposition. The Commonwealth will pay reasonable charges to the Contractor for handling, loading, preparing, transporting, storing and caring for non-conforming waste. The Commonwealth shall have the option of considering alternate means of transportation if proposed transportation pricing is deemed excessive. Title, risk of loss and all other incidents of ownership to nonconforming wastes shall remain with the Commonwealth provided the Contractor takes all necessary steps to protect appropriately the nonconforming waste.

18. REPORTING AND DELIVERY INSTRUCTIONS

A. Agency Report: Contractor shall submit a quarterly report by the 10th of the month following the end of the quarter to each agency using its services under this contract indicating detailed invoiced sales activity from information found on the manifest to support the fee or rate billed.

B. DGS/DPS Report: The Contractor shall submit to DGS/DPS a statewide waste report by the 10th of the month following the end of the quarter on the provided *Quarterly Usage Report*.

19. METHOD OF PAYMENT:

The Contractor shall submit complete invoices listing the services performed and completed to the agencies' Contract Administrator or designee. The Contractor shall assess charges for labor performed while onsite and not during travel (portal-to-portal). The Contractor will not charge agencies for services that were not performed by providing a refund or a credit to the account. To facilitate timely payment, invoices must have the:

1. Contract Number;
2. Purchase Order Number;
3. Description of services;
4. Dates of services and;
5. Contract ID from the SRS.

Commonwealth of VA agencies will make payment to the contractor in net 30 days or in accordance with discount terms, if offered, after receipt of a valid invoice and satisfactory completion of the requested services.

5. COMMODITY INFORMATION & PRICING

See Service Rate Schedule Summary for contract prices and specifications.

6. GENERAL TERMS AND CONDITIONS

A. VENDORS MANUAL: This proposal 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 proposal 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, Contractors 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 laces, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
   b. The Contractor, in all proposals 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 proposals 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 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 Proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting Proposals or proposals on contracts for the type of goods and/or services covered by this proposal, 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 RFPs: Failure to submit a Proposal on the official state form provided for that purpose shall be a cause for rejection of the Proposal. Modification of or additions to any portion of the Invitation for Proposals 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 as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the Offeror withdraw or modify nonresponsive portions of a Proposal, 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 Offeror has questions about the specifications or other proposal documents, the prospective Offeror should contact the buyer whose name appears on the face of the proposal no later than seven working days before the due date. Any revisions to the proposal 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 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.

   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 that 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-days (30) 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 proposal 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. <u>PRECEDENCE OF TERMS:</u> 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 proposal, the Special Terms and Conditions shall apply.

L. <u>QUALIFICATIONS OF OFFERORS:</u> 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. <u>TESTING AND INSPECTION:</u> The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. <u>ASSIGNMENT OF CONTRACT:</u> 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 terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any 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, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, 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. TRANSPORTATION AND PACKAGING: By submitting their Proposals, 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.

S. INSURANCE: By signing and submitting a bid or proposal under this proposal, 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 and $2,000,000 in the aggregate. . 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 combined single limit.

T. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this proposal, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

U. 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 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 proposals 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.

V. TOBACCO-FREE WORKPLACE: During the performance of this contract, the contractor agrees to adhere to a tobacco-free workplace policy. Tobacco use is prohibited on state facility grounds and structures. Contractor agrees to ensure its employees and any subcontractors remain tobacco-free while on facility grounds and in facility structures, including in their personal vehicles when located on Hospital grounds.

W. NONDISCRIMINATION OF CONTRACTORS: A Offeror, or Contractor shall not be discriminated against in the proposal 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 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, CONTRACTS, AND ORDERS: 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 eprocurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

a. For orders issued July 1, 2011 thru December 31, 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.

b. For orders issued January 1, 2014 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.

For orders issued prior to July 1, 2011 the vendor transaction fees can be found at www.eVA.virginia.gov.

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.

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. **AUDIT OF MARKET BASKET PRICING AND MANUFACTURER AND/OR COMMODITY DISCOUNTS:** Contractor may be requested to obtain a certified audit, at any time for the contract duration, to verify that the Contractor's pricing is same as the prices on the Service Rate Schedule, and to verify to the Commonwealth that category discounts are in compliance with the contract terms.

3. **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.

4. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, to the extent caused by Contractor's negligence, willful misconduct, or breach of its obligation under this Agreement, provided that the foregoing indemnification obligations shall not apply to the extent such liability is caused by the negligence or willful misconduct of the Commonwealth of Virginia. Neither party shall be liable to the other for indirect, incidental, consequential, or special damages, including loss of use or lost profits for breach of contract claims.

6. **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. The acceptance of payment by purchase card is **mandatory (unless waived by DPS) within 90 days of contract award.**

   Payment for orders issued against the contract(s) 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 **Bank of America (BOA) Visa Purchasing Card** 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 vendors provide 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 **Bank of America (BOA) Visa Purchasing Card.**

- 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
    1. Freight Amount
    2. Extended line Item Amount

7. **CANCELLATION OF CONTRACT:** The Commonwealth reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

   An agencies employee is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the Contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. The Purchasing Agency will document and notify the Contract Officer of an omission or failure by the Contractor to perform to the standard of the manufacturer.

8. **RENEWAL OF CONTRACT/PRICE ADJUSTMENTS:** The Commonwealth may renew this contract for two (2) successive two - year periods under the terms and conditions of the original contract except as stated below. Price adjustments may be permitted for changes in the contractor's cost of providing goods and services. The "Services", "All Items", and other relevant categories of the CPI-U, U.S. City Average section of the Consumer Price Index of the U.S. Bureau of Labor Statistics, will be used as guides to evaluate requested price changes, as will other indices including Producer Price Index and U.S. Department of Energy fuel statistics. No price increases will be authorized for 365 calendar days after the effective date of the contract, with the exception that the Commonwealth will consider price adjustment requests six months (approximately 180 calendar days) after the effective date of the contract based on changes in fuel cost for transportation. Price escalation may be permitted only at the end of 365 calendar days and each 365 calendar days thereafter and only where verified to the satisfaction of the purchasing office, with the exception that fuel cost price escalation may be permitted only at the end of six months (approximately 180 calendar days) and each six months (approximately 180 calendar days) thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period. Contractor shall give not less than 30 days advance notice of any price increase request, with documentation, to the purchasing office.

   The purchasing office will notify the using agencies and Contractor in writing of the effective date of any increase, which it approves. However, the contractor shall fill all purchase orders received prior to the

effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases, which affect the cost of goods or services, are required to be communicated immediately to the purchasing office.

9. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of 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.

10. **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.

11. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The contract will result in multiple purchase orders with the eVA transaction fee specified below assessed for each order.

    a. For orders issued July 1, 2011 thru December 31, 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.

    b. For orders issued January 1, 2014, 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 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.

12. ORDERING: The parties agree that all purchase orders issued from Commonwealth of Virginia agencies and other government entities of the Commonwealth must be entered through Virginia's electronic ordering system known as eVA. **Orders placed against the contract, which are not processed through eVA, are not in compliance with the terms and conditions of this contract and Contractors receiving such non-eVA orders shall request the Ordering Agency to resubmit the order through eVA. If the Contractor accepts an order under the Contract, where the order has not been processed through eVA, the Contractor will be in breach of Contract. If an Ordering Agency issues an order, which is not processed through eVA, but purports to be authorized by this Contract, the Ordering Agency employees may be found in violation of Section 2.2-4376 of the Code of Virginia. Section 2.2-4376 prohibits public employees from knowingly making false statements or misrepresentations, and from using documents known to contain false statements or misrepresentations.**

13. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

14. CONTRACT TERMS: The Commonwealth of VA's General Terms and Conditions and this contract's Special Terms and Conditions take precedence over any local documentation worksheets

15. CONTINUITY OF SERVICES:

a. The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:

(i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
(ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
(iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

b. The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval, whose approval shall not be unreasonably withheld.

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, whose approval shall not be unreasonably withheld.

16. **DISPUTE RESOLUTION PROCEDURES:** The Agency will seek resolution of contractual and regulatory compliance disputes with the Contractor's representative. If no resolution is reached within a reasonable period of time not to exceed 30 days, the Agency and/or the Contractor may contact:

a. For Contract Compliance: The VA Department of General Services for contract compliance assistance by initiating Procurement Complaint Form DGS-41-024.
b. For Regulatory Compliance: The VA Department of Environmental Quality (DEQ) to arbitrate in good faith.

If after completing the above procedures the Agency and/or the Contractor have failed to resolve the issues, the Alternative Dispute Resolution (ADR) provision stated in Section IX.B. Applicable Laws and Courts may be followed.