

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

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**Notice of Contract**

CONTRACT # **E194-72950**

Contract Title: **Graphing Calculators & Accessories – School Edition**

1	DATE:	October 24, 2013
2	CONTRACT PERIOD:	<b>November 1, 2013 through October 31, 2015</b>
3	SUPERCEDES:	n/a
4	AUTHORIZED USERS:	See Below
5	CONTRACTOR'S eVA VENDOR ID#:	<b>C4711</b>
6	<b>CONTRACTOR / VENDOR</b>	<b>D&amp;H Distributing Company</b>
7	<b>CONTRACTOR CONTACT</b>	<b>Angela Rhoads</b> (see page 3)
8	TERMS	NET 30
9	DELIVERY	See Section 3
10	F.O.B.	Destination, Freight Included
11	CONTRACT PRICES	See Pricing Schedule
12	DPS CONTRACT OFFICER	Kim Hatala Phone: 804-786-3849 Email: <a href="mailto:kim.hatala@dgs.virginia.gov">kim.hatala@dgs.virginia.gov</a>

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

**AUTHORIZED USERS:** This contract is the result of a competitive bid program and its use is **Optional** for all **STATE AGENCIES** (unless otherwise indicated in item 4 above) and Optional Use for other public bodies and entities authorized to use the contract by the *Code of Virginia* § 2.2-1120, to include private institutions of higher education chartered in Virginia **and** granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, in the purchase of any commodity listed herein.

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## 1. CONTRACTOR / VENDOR INFORMATION

<b>Contractor Name</b>	<b>eVA Vendor ID#</b>	<b>Location Address(es)</b>	<b>Contact Information</b> (Name, Phone, Fax and Email)
<b>D&amp;H Distributing Company</b>	<b>C4711</b>	2525 North Seventh Street Harrisburg, PA 17110	Name: <b>Angela Rhoads</b> Phone: 800-340-1006 x7683 Fax: 717-255-6750 Email: ARhoads@dandh.com

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## **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. 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 vendor's invoice is the responsibility of the receiving entity.
4. **Complaints:** Any complaint that is due to a violation or breach of the Contract provisions, shall be reported on an official DPS "PROCUREMENT COMPLAINT FORM" (Form # DGS-41-024). To facilitate notification, this form shall be completed by the ordering entity and sent to the contract vendor, with a copy sent to DPS to the address shown on the form. Contract vendors shall also use this form to initiate complaints concerning entities. This form may be downloaded from the internet at [www.eva.virginia.gov](http://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. Disputes between the ordering agency and the vendor will be resolved in accordance with the terms of the contract and any change orders/renewals unless prior approval was granted by DPS.
6. See Additional Information section below.

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### **3. ADDITIONAL INFORMATION**

1. **Delivery:** Texas Instruments Products = 5 Days ARO. Casio Products = 10 Days ARO.
2. **Minimum Order Quantity:** 1 each
3. **D&H Distributing Company Warranty & Return Information;** D&H Distributing Company offers a standard 1-year manufacturer's warranty on all calculators with a D&H invoice or packing list number. Please note that this warranty applies only to manufacturer's defects and does not cover damage from student abuse. D&H does not repair defective products and does not have the ability to offer replacements on calculators after the manufacturer has discontinued them. In cases where the product is discontinued and still under warranty, D&H will offer a credit to the customer upon receipt of the defective product. D&H will replace any defective product under warranty and will pay the freight charges on the replacement product to the customer. The customer is responsible for freight on returning the defective product to D&H. If a product becomes defective within the warranty period please call (800) 340-1006 with your invoice or packing list number and a customer support specialist will assist you. (An invoice or packing list acts as proof of purchase and is required in order to process a return.) A representative will then fax or email you a return authorization form with a return information label. This return label must be affixed to the outside of each carton that you are returning. The top portion of the form should be included in the box with the defective product. D&H's return warehouse will not accept products shipped back without a return authorization number. A 10% restocking fee will be applied when a new/opened product is returned and not accompanied by an offsetting order.
4. **Renewals:** Three (3) optional one-year renewal periods remain.
5. **No other products that what is listed on this contract can be ordered.**

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## 4. SCOPE OF WORK /SPECIFICATIONS

- 4.1 **General:** The specifications contained herein and in all other IFB attachments describe and define the minimum level of goods and services for the vendor(s) to furnish and deliver VA State Approved calculators and accessories.
- 4.2 **Proprietary Specifications:** The Commonwealth has specified exact Brand Name items in this solicitation, as shown on Attachment B - Pricing Schedule. The calculators and accessories have been approved by the Virginia Department of Education for the use in Virginia school systems for SOL testing. All bidders **must** bid on the exact item specified based on the Description; **No** substitutions or alternates will be considered.

It is understood that the manufacturer(s) may change their SKU numbers regularly, so if there is a discrepancy between the Description and the Manufacturer's SKU number listed, then the **Description shall prevail**. If an item Description has a choice between retail (clam pack) packaging or non-retail (boxed) packaging, then the vendor must provide the non-retail (boxed) packaging. All items **must** be bid to include all components and accessories that are normally provided standard with the calculator or kit such as cables, batteries and manual. All equipment or software provided under this contract shall be the latest version available from the manufacturer.

**\*\*\* Failure** to provide a bid on all items within a Lot or to provide a bid for the exact Brand Named Description listed, will result in your entire bid being deemed non-responsive and rejected. **If a bidder has a question or a concern about this requirement, they must email the DPS Contract Officer no later than 10 days prior to the bid closing date.** The Commonwealth reserves the right to solely evaluate all bids and to make all determinations. All bidders must complete and include Attachment B with their bid.

- 4.3 **Product Information:** Bidders shall submit complete technical data of all product(s) being offered with their bid that clearly documents equivalence with the product specification(s). The Bidder may submit any necessary additional information, explanations, etc. The Commonwealth reserves the right to request additional technical data, product samples and to request clarification when deemed necessary. Please note that all bids received that conflict with, or take exceptions to, the mandatory Terms or requirements of this solicitation will **not** be considered. Failure on the part of the bidder to provide all requested documentation and/or failure to provide any information as instructed, may be cause to deem the bid non-responsive.
- 4.4 **Bidder Requirements:** By submitting a bid, the Bidder certifies that all goods furnished under any resulting contract shall be of the most current production model/version and shall have a valid SKU/Part # assigned by the manufacturer on such equipment during the preceding six (6) months. Also, the Bidder certifies that parts for such equipment shall be available for at least three (3) years after purchase and that no attachments or parts have been substituted or applied contrary to the manufacture's recommendation and standard procedures.
- 4.5 **Authorized Dealer Bidding:** Authorized Dealers, other than the factory/manufacturer may bid on this contract. However, in order to be considered as a responsive bidder, dealers shall secure and submit the attachment titled Manufacturer's Certification (Exhibit 4) to certify that they are a manufacturer authorized dealer and service representative for all goods and services bid. Authorized

dealers bidding on all brands included herein, shall submit a separate certification for each manufacturer listed. It shall be signed by a person duly authorized to bind all branches, dealers, and/or service establishment of the manufacturer. The signed form shall be submitted as an attachment to the electronic bid or as a hard copy attached to a paper submission as indicated in Section 3 above.

No bid will be considered from any authorized dealer other than an original equipment manufacturer, unless the above stated conditions are met.

- 4.6 **Service Requirements:** In order to be considered for an award on this contract, bidder shall be able to provide factory authorized warranty service and/or be supported by a factory authorized service facility and provide services throughout the Commonwealth. Failure to be able to provide service Statewide will result in rejection of the bid. Bidder shall provide a list including the name(s) and address(es) of such factory authorized service facilities which shall be available for use under the contract.
- 4.7 **Bid Samples:** Upon request from DGS/DPS, the bidder(s) shall submit bid samples within 10 calendar days. Failure on the part of the bidder to provide such samples within the specified time frame or to comply with these instructions may be cause to consider the bid as non-responsive. Bid samples shall be an exact and true representative sample of the actual product bid. Each bid sample shall be properly tagged or labeled with the name of the bidder and manufacturer, the bid opening date, the requisition or inquiry number and the specific commodity or item number. Bid samples shall be provided at no additional costs to the Commonwealth. Bid samples will be handled and disposed of in accordance with paragraph 5.6 of the Vendor's Manual. Furthermore, the Division reserves the right to secure additional check samples from the actual material supplied. In the event the check samples fail to conform to the contract requirements, the contractor shall immediately replace the portion of the delivered commodity with acceptable material conforming to the contract requirements at no additional cost to the Commonwealth.
- 4.8 **IFB Quantities:** Quantities set forth in this solicitation are averages based on previous order data, unless that information was not available. If the information was not available then the quantity is set at 25. The Contractor shall supply at bid prices the actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- 4.9 **Discounts:** The Contractor is urged to offer additional quantity discounts for one-time delivery of large, single orders of any assortment of items. Quantity discounts will be negotiated between the Contractor and ordering entity. The Contractor must extend any special, educational or promotional sales prices or discounts immediately to the Commonwealth during the term of the Contract. The Contractor shall immediately notify the DPS Contract Officer of all discounts and shall include the duration of the specific sale or discount price.
- 4.10 **Minimum Orders:** The minimum order for calculators or accessories will be one (1) each, shipped FOB Destination, all freight included to any authorized ordering entity within the Commonwealth of Virginia. The minimum order for software will be one (1) except for the School Licenses, which may be no more than 5 each and only if required by the manufacturer. No extra charges will be permitted.
- 4.11 **Delivery Locations and Times:** Orders shall be delivered to various state agencies, cities, counties, towns and political subdivisions throughout the State as required and indicated in the purchase order. Normal hours for delivery shall be between the hours of 8:15AM and 4:30 PM, except on official state

holidays and periods of shut down, unless otherwise instructed by the purchaser. The Vendor shall clarify and coordinate all deliveries with the purchaser.

- 4.12 **Delivery Lead Time:** Bidders shall provide a delivery lead time, after receipt of order (ARO), in the "Delivery Date" section of the solicitation. The delivery date entered should not exceed 10 calendar days ARO. The contractor shall maintain an adequate stock to ensure that all purchases are filled complete within the Delivery Date ARO stated in the Contract. The Contractor shall notify the ordering entity within 48 hours of any item on the order that is placed on back order. Back orders will not relieve the Contractor of meeting the Delivery Date stated in the Contract.
- 4.13 **Delivery Inspection:** Each product delivered will be checked for damage and compliance with the purchase order. Invoice will not be approved for payment until the Contractor corrects all defects or deviations. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance.
- 4.14 **Packaging and Labeling:** Each item shall be packaged in accordance with standard commercially accepted methods. The Contractors are encouraged to consider delivery methods that utilize recyclable or reusable packaging material and containers. Each shipment shall include a packing slip that indicates at a minimum, the ordering entity's information, purchase order number, contract number, item descriptions and part numbers, quantity ordered, quantity shipped and invoice number.
- 4.15 **Product Returns:** The Contractor shall arrange for the return of all defective or damaged products, excess quantities and/or duplicate shipments received by the agency within ten (10) days after notification at the Contractor's sole expense. Credit for returned goods shall be made within a maximum of 5 business days after they are picked up. The contractor shall not charge a restocking fee or pickup fee for such.

The Contractor shall arrange for the return of unused products ordered in error by the purchaser. The purchaser may be responsible for shipping charges and a restocking fee not to exceed a total of 10% of the actual sale price of the item, if applicable. The bidder shall indicate the restocking fee with their bid, if less than 10%. The contractor shall promptly credit the invoice and issue a credit notification to the purchaser.

- 4.16 **Contract Replacements:** Calculators and/or accessories on contract may be replaced during the term of the contract but must have prior approval by the Contract Officer. This may happen due to a product being discontinued. Approval is contingent upon compliance with the following conditions:
1. The Contractor requests approval in writing to the Contract Officer.
  2. The replacement shall offer the same or greater specifications than the item being replaced. The replacement shall meet or exceed all performance level minimum specifications including additional features and be state approved.
  3. The replacement shall have the same unit price or less than the item being replaced.
- 4.17 **Ordering by State Agencies:** The parties agree that all orders issued under this contract by non-exempt State Agencies shall be processed through eVA unless specifically exempted by DPS in writing. Orders against this contract which are not processed through eVA are not in compliance with the terms and conditions of this contract and Contractors receiving such non-eVA orders shall request the Ordering Agency to resubmit the order through eVA. If the contractor accepts an order under this

contract from a state agency, where the order has not been processed through eVA, the contractor will be in breach of contract. All 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. All orders shall be reported in accordance with Section 6.0. The vendor may not accept any purchase order against this contract that lists any item not explicitly stated on the contract award.

- 4.18 **Ordering by Other Public Bodies (Non-State):** Other public bodies utilizing this contract should, to the maximum extent possible, submit purchase orders to the contractor through eVA, however they may use their own ordering system. All orders will be governed by this agreement. All orders shall be reported per Section 6.0. The vendor may not accept any purchase order against this contract that lists any item not explicitly stated on the contract award.
- 4.19 **Taxes:** No State or Federal Taxes are to be included in the Bid Response pricing. The ordering agencies as described herein shall furnish their Tax Exemption Registration number upon request.
- 4.20 **Contractor generated Order Confirmation:** Contractors are required to send the ordering agency an electronic/written confirmation of receipt of the purchase order to include confirmation of the items, quantities, delivery information, etc. being placed. eVA's automated email confirmation functionality may not be used to confirm orders. This applies to all orders issued against this contract. This information must be completed within 2 days after receipt of order. Confirmations should be faxed or emailed to the Ordering Person shown on the purchase order.
- 4.21 **Substitutions:** The products delivered shall be the exact items ordered and in no instance shall the Contractor substitute items without the prior written approval of the *DPS Contract Officer*. All items shipped must be new, unused and in compliance with the contract.

## 5. COMMODITY INFORMATION & PRICING

### LOT 1 – TEXAS INSTRUMENTS (TI) Calculators and Accessories

LINE ITEM	DESCRIPTION	Mfg. SKU #	UNIT PRICE (Shipping Included)
1	<b>TI-83 Plus</b> - Single, Graphing Calculator	83PL/TBL/1L1	\$ 87.04
2	<b>TI-83 Plus Teacher Kit</b> - Package of 10, Graphing Calculator	83PL/TPK/1L1	\$ 870.40
3	<b>TI-84 Plus</b> - Single, Graphing Calculator	84PL/TBL/1L1	\$ 95.73
4	<b>TI-84 Plus EZ Spot Yellow Teacher Kit</b> - Package of 10, School Edition, printed with "School Property", Graphing Calculator	84PL/TPK/1L1	\$ 957.30
5	<b>TI-84 Plus C Silver Edition</b> - Single, Graphing Calculator	84PLSEC/TBL/1L1	\$ 114.12
6	<b>TI-84 Plus C Silver Edition EZ Spot Yellow Teacher Kit</b> - Package of 10, School Edition, printed with "School Property", Graphing Calculator, kit also includes TI-84 Plus C Charging Station.	84PLSEC/TPK/2L1	\$ 1197.20
7	<b>TI-Nspire CX (Non-CAS)</b> - Single, Graphing Calculator	N3/CLM/1L1	\$ 120.88
8	<b>TI-Nspire CX (Non-CAS) EZ Spot Teacher Kit</b> - Package of 10, School Edition, printed with "School Property", Graphing Calculator, includes Docking Station	N3/TPK/2L1	\$ 1315.20
9	<b>TI-Nspire CX Docking Station</b> <i>(note: already included with the TI-Nspire CX teacher kit)</i>	N3DS/PWB/2L1	\$ 107.84
10	<b>TI-84 Plus C Silver Edition Charging Station</b> <i>(note: already included with the TI-84 Plus C teacher kit)</i>	84CCS/PWB/2L1	\$ 57.42
11	<b>Viewscreen Panel</b> - for TI-83 and TI-84 Series	TI-82VSH	\$ 171.56
12	<b>TI-CBL2</b> - Calculator Based Laboratory System 2, Data Collection	CBL2/PWB/4L1	\$ 145.07
13	<b>TI-CBR2</b> - Calculator Based Ranger System 2, Data Collection	CBR2/PWB/1L1	\$ 81.24
14	<b>TI-Nspire Lab Cradle</b> - Data Collection	NSLC/PWB/2L1	\$ 125.72

15	<b>TI Smartview Emulator Software for TI-84 Plus Family - Single User Perpetual License, CD (PC and Mac)</b>	84EMU/SP/KT/2L1	\$ 126.27
16	<b>TI Smartview Emulator Software for TI-84 Plus Family - School Managed Perpetual License (PC and Mac)</b>	84EMU/NP/ESW	\$ 66.49
17	<b>TI Nspire Teacher Software (for TI-Nspire CX) - Single User Perpetual License, CD (PC and Mac)</b>	N2T/SP/KT/2L1	\$ 126.27
18	<b>TI Nspire Teacher Software (for TI-Nspire CX) School Managed Perpetual License (PC and Mac)</b>	N2T/NP/ESW	\$ 66.49
19	<b>TI Nspire Student Software (Non-CAS)- Single User Perpetual License, CD (PC and Mac)</b>	NSS/SP/KT/2L1	\$ 67.02

**Lot 2 – CASIO Calculators and Accessories**

<b>LINE ITEM</b>	<b>DESCRIPTION</b>	<b>Mfg. SKU #</b>	<b>UNIT PRICE (Shipping Included)</b>
20	<b>fx-9750GII</b> - Single, Graphing Calculator	FX-9750GII-L-IH	\$ 44.22
21	<b>fx-9750GII School Edition</b> - Single, printed with "School Property"	FX-9750GII-SC	\$ 44.22
22	<b>fx-9860GII</b> - Single, Graphing Calculator	FX-9860GII-L-IH	\$ 67.36
23	<b>PRIZM fx-CG10</b> - Single, Graphing Calculator	FX-CG-10-L-IH	\$ 102.63
24	<b>PRIZM fx-CG10 School Edition</b> - Single, printed with "School Property"	FX-CG-10-IH-SC	\$ 102.63
25	<b>fx-Manager PLUS software - Single License, CD</b> (for fx-9750GII or fx-9860GII )	FA-9860A	\$ 53.20
26	<b>fx-Manager PLUS software - School License, CD</b> (for fx-9750GII or fx-9860GII )	FA-9860B	\$ 266.00
27	<b>fx-CG Manager PLUS software - Single License, CD</b> (for fx-CG10)	FA-CG1A	\$ 106.40
28	<b>fx-CG Manager PLUS software - School License, CD</b> (for fx-CG10)	FA-CG1B	\$ 532.00

## **6. GENERAL TERMS AND CONDITIONS**

A. **VENDORS MANUAL**: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the "Vendor" tab.

B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION**: By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E). In every contract over \$10,000 the provisions in 1. and 2. below apply: 1. During the performance of this contract, the contractor agrees as follows: a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer. c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements. 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS**: By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. **ANTITRUST**: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFB's**: Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the

Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working Solicitation. Any revisions to the solicitation will be made only by addendum issued by the buyer.

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

In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363). 2. To Subcontractors: a.) A contractor awarded a contract under this solicitation is hereby obligated: (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b.) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth. 3.) Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

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) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways: 1. The parties may agree in writing to modify the 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. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

S. TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offers) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and

shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

T. INSURANCE (part 1 of 2): By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. (continued in part 2)

T. INSURANCE (part 2 of 2) 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 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. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contract must assure that the required coverage is maintained by the the Contractor (or third party owner of such motor vehicle.)

U. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA website ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

V. DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drugfree 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](http://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 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. 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 through 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](http://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.

Z. SET ASIDES: This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

AA. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, bidders/offerors 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.

## 7. SPECIAL TERMS AND CONDITIONS

- 5.1 ADDITIONAL INFORMATION: The Commonwealth reserves the right to ask any Bidder to submit information missing from its bid, to clarify its bid, and to submit additional information, which the Commonwealth deems desirable.
- 5.2 AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S): The Commonwealth will make a separate award for each Lot, on a Grand Total per Lot basis, to the lowest responsive and responsible bidder, however; the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest priced bidder. **Bidders need not bid on all Lots, however they must bid on all items within a Lot to be considered for an award.** Unit Prices, line and grand totals must be shown. The Lot's **Grand Total** shall be calculated by adding all Line Total extensions as shown on Attachment B – Pricing Schedule. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the bidder to render required goods and services. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest. In case of arithmetic errors, the unit price(s) will govern. If cash discount for prompt payment is offered, it must be clearly shown. Discounts for prompt payment will not be considered in making awards.
- 5.3 AUDIT: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 5.4 AUTHORIZED DEALER: By signing this bid, the Bidder certifies that it is a manufacturer-authorized dealer/distributor for all goods and services it proposes to furnish under any resulting contract.
- 5.5 BID ACCEPTANCE PERIOD: Any bid in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days, the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- 5.6 BID PRICES: Bids shall be in the form of a firm unit price for each item during the contract period.
- 5.7 CONTACT INFORMATION: The bidder shall provide a telephone number, facsimile number, cellular number, email address, physical address, and the name of responsible person(s) of your company who may be contacted regarding this purchase and required reports. The bidder must provide this information in the space provided in Exhibit 1, Bidder Data Sheet.
- 5.8 CONTRACT DOCUMENTS: The contract entered into by the parties shall consist of the Invitation for Bids, the bid submitted by the Contractor; General Terms and Conditions, these Special Terms and Conditions; the specifications; a resulting Purchase order and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.
- 5.9 CANCELLATION OF CONTRACT: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract

period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- 5.10 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.
- 5.11 DELIVERY: The bidder shall include in their submitted solicitation response where requested the appropriate delivery days. This date may be a factor in making the award.
- 5.12 EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete delivery ready for the Commonwealth's use, and shall include all applicable freight and installation charges over the minimum order quantity; extra charges will not be allowed.
- 5.13 PROMPT PAYMENT DISCOUNTS: Agency will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment should be included in your bid where indicated. Discounts will not be calculated in determining net low bid.
- 5.14 SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
- 5.15 FINAL INSPECTION: The Contractor shall demonstrate to the authorized owners representative that the equipment delivered is fully operational and in compliance with the contract specifications. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance.
- 5.16 MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets and descriptive literature shall be provided with each chemical and/or compound shipped.
- 5.17 SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:  
A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders are required to submit a Small Business Subcontracting Plan. Unless the bidder is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Virginia Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a yearly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on an annual basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

5.18 ERRORS IN BIDS: Errors in bids will be handled in accordance with section 5.13 of the *Vendors Manual*.

5.19 eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract may result in multiple purchase order(s) with the eVA transaction fee specified below assessed for each order.

- a. For orders issued July 1, 2011 through 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](http://www.eva.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format

(CIF) Specification that can be accessed and downloaded from [www.eVA.virginia.gov](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

5.20 NAME OF MANUFACTURER AND SHIPPING POINT: The bidder shall supply the name and address of the manufacturer of each item offered and the shipping point where indicated in the solicitation.

5.21 MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC) / PAYMENT TERMS/OPTIONS (for orders under \$5,000): Contract Users pay by check, electronic funds transfer (ETF), or with the Commonwealth's authorized procurement card. Standard payment terms are net 30 days from products delivery or properly executed invoice receipt. Purchasing charge cards offer State agencies and Institutions the opportunity to streamline their procedures for procuring and paying for small dollar goods and services. Vendors responding to this solicitation should note that acceptance of payment by purchase card is Mandatory unless waived by DPS) within 90 days of contract award. For current contracts where acceptance of the purchasing card is not in effect, Contractors must (unless waived by DPS) accept purchase card payments within 90 days of contract award.

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

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

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

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

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

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

5.22 PRODUCT AVAILABILITY/SUBSTITUTION: Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in advance in writing by the DPS

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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 DPS Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

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

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

offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

- 5.29 **SUBCONTRACTS:** In the event that the Contractor desires to subcontract some part of its obligation hereunder, the Contractor shall furnish the Commonwealth with the names, qualifications and experience of their proposed Subcontractors. No portion of the contract shall be subcontracted without prior written consent of the Commonwealth. The Contractor shall remain fully liable and responsible for its Subcontractor(s) and shall assure compliance with all requirements of the contract. The bidder must include all planned subcontractors with their bid.
- 5.30 **WARRANTY (COMMERCIAL):** The contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the manufacturer and contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth *by any other clause of this solicitation.* Copies of these warranties should be furnished with the bid. Specifications that state a warranty greater than the most favorable commercial warranty will convey.
- 5.31 **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials or for changes based on other market conditions. NO changes are permitted or effective unless approved in writing by the DPS Contract Officer. The BLS – Consumer Price Index CWU0000SEEE04-*Telephone hardware, calculators, and other consumer information items* and the applicable Producer Price Index/Indices, as well as other relevant market conditions as determined appropriate and approved by DPS, will be used by DPS as guides to evaluate requested price changes. No price increases will be authorized for 365 calendar days after the effective date of the contract. Special Note: Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, “across the board” price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance request of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month *following* the end of the full 30-day notification period. The contractor shall document the amount and *proposed* effective date of any general change in the price materials. Documentation shall be supplied with the contractors request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount and reason of percentage of increase which is being passed on to the contractor by the contractors suppliers.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increases which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices and may not “hold” orders. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

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

5.33 CONTINUITY OF SERVICES:

- a) The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
  - (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  - (ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - (iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
- c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

5.34 FINANCIAL WARRANTY: Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

5.35 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.

5.36 **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any public facility for the purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another public body to which some or all of its functions are transferred.

**Section 6.0 from IFB: REPORTS:**

**Purchase Volume Report (PVR):** The Contractor shall furnish the Division of Purchases and Supply a PVR in accordance with the Special Terms and Conditions “*Purchase Volume Report*”. The PVR shall be provided electronically in Excel, formatted similar to the example below and be itemized to include the minimum purchase information listed. There shall be no exceptions from this requirement without a written request approved by the Contract Officer. **This report must include all orders placed in or outside of eVA.**

**Small Business Plan Final Actual Involvement Report:** The Contractor shall submit to the Contract officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses, women-owned businesses and minority-owned businesses during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned, minority-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the bid, and the actual percent of the total estimated contract value. A suggested format is shown below.

The Contractor shall also respond to and deliver any requested non-scheduled reports or inquiries from the Contract Officer, or his/her designee as requested and at no extra charge.

*Example*  
**Purchase Volume Report**

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

*Example*  
**Small Business Plan Final Actual Involvement Report**

Contract # _____		Coverage Period _____		ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
FIRM NAME, ADDRESS, AND		TYPE				

PHONE NUMBER	GOOD/SERVICES			
<b>TOTALS</b>				

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