COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
1111 E. BROAD STREET
P. O. BOX 1199
RICHMOND, VIRGINIA 23218-1199

TRADING PARTNER AGREEMENT
SET ASIDE FOR SMALL BUSINESS

1. DATE ..... January 29, 2010

2. COMMODITY NAME ..... Carpet

3. AGREEMENT NUMBER..... **E194-815**

4. AGREEMENT PERIOD ..... February 1, 2010 through January 31, 2011

5. SUPERSEDES 36010-01-09

6. AUTHORIZED USERS ..... State Agencies, Institutions, and Public Bodies

7. INSTRUCTIONS ..... Page 2
Note: *Section III, paragraph H. If your procurement meets or exceeds the single quote threshold $5,000.*

8. TERMS & CONDITIONS ..... Attachments 1 & 2

9. TRADING PARTNERS LISTED BY LOCALITY ..... See Contract Data File*

10. CARPET MILLS LISTED BY TRADING PARTNER ..... See Contract Data File*

11. CARPETS AND BUDGET PRICING LISTED BY MILL ..... See Contract Data File*

12. MILL AND PARTNER'S ADDRESS BOOK ..... See Contract Data File*

*(The agreement data is available in the online Carpet Management System)

13. FOR FURTHER INFORMATION CONTACT:

Chris A. Nichols, VCO, CPPB
Phone: (804) 786-3849
Fax: (804) 786-0223

14. ADDITIONAL COPIES OF THIS AGREEMENT AND ANY ASSOCIATED AGREEMENT CHANGES MAY BE VIEWED AND PRINTED AT THE DPS WEBSITE: www.eva.virginia.gov (contracts)

15. Notice to State Agencies and other Authorized Users: This is the result of agreements between the Commonwealth, Carpet manufacturers and their associated Authorized Dealers. This is an OPTIONAL USE AGREEMENT for the purchase of carpet, carpet installation and associated services. Users may use the budget pricing for estimating purposes (only) and the enclosed terms and conditions for carpet acquisition. *Read and follow INSTRUCTIONS on page 2.*
Note: If this agreement is used by public bodies, orders shall be placed through eVA.

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

Chris A. Nichols, CPPB, VCO
Statewide Contract Officer

INSTRUCTIONS

Vendors that appear on the Trading Partner Agreement have been certified by DMBE as a Small Business. This agreement may be used by agencies, institutions, and other public bodies up to the single quote limit of $5,000 without seeking more than one quote. The terms and conditions may be incorporated by reference into solicitations under $50,000.

NOTE: *For solicitations over $50,000 you should not restrict bidders to the vendors on this set aside agreement.*

SCOPE OF AGREEMENT: To establish terms and conditions under which multiple dealers (Trading Partners) and manufacturers (Strategic Partners) will sell carpet to the authorized users of this agreement.

I. The Trading Partner Agreement. This agreement details the Terms and Conditions under which the dealers will sell carpet to you.

II. The Strategic Partner Agreement is an agreement between DPS and the manufacturers. This agreement consists of a listing of the carpets made by them that the Trading Partner will sell and a budget installed price for each carpet. The budget(ing) installed price is simply an estimate by the manufacturer of what you should expect to pay per square yard to have a particular carpet installed. This price does not include other costs such as floor repair, cove base, etc. This price is to help you sort out what carpets fall within your budget.

III. Instructions for using this agreement. (This agreement consists of two files: 36010-01-10PA and Agreement Data)

A. All carpet will be bought on an individual job basis, "spot purchase".
B. You are authorized to use any procurement method allowed by regulation/law.
C. Check to see what dealers sell in your city/county. (See Agreement Data file)
D. Check to see what mills they represent. (See Agreement Data file)
E. Check the Strategic Partners to see what carpet choices you have. (See Agreement Data file)
F. Select carpets, which fall within your budget and then compare them for suitability.
G. Prepare your solicitation and cite both agreements. Your award should be based on a lump sum for the entire job. Additional Special Terms and Conditions unique to each job may be included such as bid bond, performance bond or special delivery instructions.
H. If your procurement meets or exceeds the single quote threshold ($5,000), you are required to solicit the proper number of partners as prescribed by regulation. In the event that you do not have enough partners listed for your city/county to satisfy this requirement, you may solicit other partners not listed for your area.

Note: The agreement data is available in the online Carpet Management System.

IV. A. Purchase orders will be submitted to the Contractor via the Commonwealth of Virginia's electronic procurement system, also known as eVA. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor. If this agreement is authorized for use by localities, Virginia cities, counties, town and political subdivisions, then these entities must place their **orders through eVA**.

B. The applicable agreement number **36010-01-09PA** must be shown on each purchase order placed in eVA.

C. Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia city, county, town or political subdivision.

D. Any complaint as to quality, faulty or delinquent delivery, or violation of agreement provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor. Complaint forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available at www.forms.dgs.virginia.gov

E. Contractor is required to provide a carpet installation certificate as depicted on page 18 (Attachment A).

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

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

Charge Card Levels:

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

Level 1 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 GE MasterCard.

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

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

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

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TRADING PARTNER AGREEMENT COMMERCIAL CARPET

A. DEFINITIONS: As used in this agreement the following definitions apply.

Contractor(s) shall mean any firm which has been awarded a contract pursuant to this agreement.

Bid shall mean a response to a solicitation issued pursuant to this agreement.

Bidder(s) shall mean any firm that submits a response to a solicitation issued pursuant to this agreement.

Trading Partner shall mean any firm that has duly executed this agreement with the COVA.

B. APPLICANT QUALIFICATIONS: Submissions will be accepted only from responsible commercial carpet dealers. A commercial dealer is a dealer that installs carpet in public buildings and business including college dormitories. The Commonwealth will use the following qualifications as part of its determination of applicant responsibility:

1. Applicant shall be an authorized dealer for the products of the manufacturer listed in paragraph H of this agreement.

2. Applicant shall be a licensed contractor in the specialty CIC Commercial Improvements, home improvements or other carpet installation venue.

3. Applicant shall be insured as outlined in paragraph D.

C. F.O.B POINT: All items delivered pursuant to this agreement shall be F.O.B. destination.

D. TRADING PARTNER CONTRACTOR REGISTRATION: If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars ($70,000) or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is five hundred thousand dollars ($500,000) or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars ($7,500) or more but less than seventy thousand dollars ($70,000), (one thousand dollars [$1,000] for electrical, plumbing and HVAC work) the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars ($1,000) or more but less than seventy-five hundred dollars ($7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The bidder/offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

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

Licensed Class C Virginia Contractor No. _____
Specialty _____

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

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

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

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

Contractor Name:_____ Subcontractor Name:_____

License # _____ Type _____

F. SITE VISIT: Agencies, Institutions, and Political Subdivisions may require mandatory site visits prior to submitting bids/offers. In the event that insufficient firms attend the mandatory site visit to insure adequate competition, the agency/political subdivision may invite additional firms to a site visit at a later date. The determination as to whether or not sufficient firms attended the mandatory site visit shall be at the sole discretion of the agency/political subdivision. In no event shall a firm which was specifically notified of the first mandatory site visit and did not attend the site visit be invited to any later site visits which are arranged solely for the purpose of insuring adequate competition.

G. Orders. Unless otherwise instructed by the Division of Purchases and Supply, all departments, institutions and agencies of the Commonwealth of Virginia.

A. Purchase orders will be submitted to the Contractor via the Commonwealth of Virginia's electronic procurement system, also known as eVA to the maximum extent possible. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor.

B. The applicable agreement number must be shown on each purchase order and copy, each facsimile transmission or given verbally when telephonic orders are placed.

C. Inspection on delivery and approval of vendor's invoice is the responsibility of receiving state agency, Virginia city, county, town or political subdivision.

D. Any complaint as to quality, faulty or delinquent delivery, or violation of agreement provisions by contractor shall be reported to the Division of Purchases and Supply for handling with the contractor. Complaint forms (DGS-41-024), by which to facilitate the notification of the contractor and this office of complaints, are available at http://www.dgs.virginia.gov.

E. Contractor is required to provide a carpet installation certificate as depicted on **Attachment A**

H. MANUFACTURERS: Applicants shall provide a list of all of the carpet manufacturers for whom they are authorized dealers. By signing this agreement, I hereby certify that my firm is an authorized dealer for the manufacturers listed below. Complete the listing in the following table: Attach additional pages, if necessary.

Manufacturer Name	Manufacturer's Address	Telephone number	Contact Person

I. GEOGRAPHICAL WORK AREA(S):

Partner applicants shall provide a list of all geographic areas they desire to service. Placing an X by a County or City below will indicate that you can sell carpet from each of the manufacturers listed in Paragraph F. If you cannot sell carpet from each of the manufacturers listed in paragraph F above in each of the counties/cities you have checked below, please identify on a separate sheet of paper which carpets can be sold in what county/city.

County/City	Mark X If You Can Service The City/ County Below
Accomack County	
Albemarle County	
Alleghany County	
Amelia County	
Amherst County	
Appomattox County	
Arlington County	
Augusta County	
Bath County	
Bedford County	
Bland County	
Botetourt County	
Brunswick County	
Buchanan County	
Buckingham County	
Campbell County	
Caroline County	
Carroll County	
Charles City County	
Charlotte County	
Chesterfield County	
Clarke County	
Craig County	
Culpeper County	
Cumberland County	
Dickenson County	
Dinwiddie County	
Essex County	
Fairfax County	
Fauquier County	
Floyd County	
Fluvanna County	
Franklin County	
Frederick County	
Giles County	
Gloucester County	
Goochland County	

Grayson County	
Greene County	
Greensville County	
Halifax County	
Hanover County	
Henrico County	
Henry County	
Highland County	
Isle of Wight County	
James City County	
King & Queen County	
King George County	
King William County	
Lancaster County	
Lee County	
Loudon County	
Louisa County	
Lunenburg County	
Madison County	
Mathews County	
Mecklenburg County	
Middlesex County	
Montgomery County	
Nelson County	
New Kent County	
Northhampton County	
Northumberland County	
Nottoway County	
Orange County	
Page County	
Patrick County	
Pittsylvania County	
Powhatan County	
Prince Edward County	
Prince George County	
Prince William County	
Pulaski County	
Rappahannock County	
Richmond County	
Roanoke County	
Rockbridge County	
Rockingham County	
Russell County	
Scott County	
Shenandoah County	
Smyth County	
Southampton County	
Spotsylvania County	
Stafford County	

Surry County	
Sussex County	
Tazewell County	
Warren County	
Washington County	
Westmoreland County	
Wise County	
Wythe County	
York County	
City of Alexandria	
City of Bedford	
City of Bristol	
City of Buena Vista	
City of Charlottesville	
City of Chesapeake	
City of Clifton Forge	
City of Colonial Heights	
City of Covington	
City of Danville	
City of Emporia	
City of Fairfax	
City of Falls Church	
City of Franklin	
City of Fredericksburg	
City of Galax	
City of Hampton	
City of Harrisonburg	
City of Hopewell	
City of Lexington	
City of Lynchburg	
City of Manassas	
City of Manassas Park	
City of Martinsville	
City of Newport News	
City of Norfolk	
City of Norton	
City of Petersburg	
City of Poquoson	
City of Portsmouth	
City of Radford	
City of Richmond	
City of Roanoke	
City of Salem	
City of South Boston	
City of Staunton	
City of Suffolk	
City of Virginia Beach	
City of Waynesboro	
City of Williamsburg	
City of Winchester	

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

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

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

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

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

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs**

1. 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 has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material 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.

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:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder 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 physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

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

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

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said

compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder 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 clearly indicates in its (bid/proposal) that the product offered is an equal 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 all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder 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 further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by

the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - $100,000.

3. Commercial General Liability - $1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

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

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over $50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.

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

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

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

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

a. eVA Basic Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data

available in the eVA purchase transaction data warehouse.

b. eVA Premium Vendor Registration Service: $25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.

d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

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

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

SPECIAL CONDITIONS

AA. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all Partners 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.

AB. **RENEWAL OF AGREEMENT:** The agreement is renewable for four (4) one-year periods. Four one-year renewals remain. The decision to exercise a renewal option will be made by the Agreement Officer approximately 120 days in advance of the expiration date of the current term

AC. **WITHDRAWAL OF BID DUE TO ERROR**: Bid withdrawal shall be in accordance with Section 5-13 of the Vendors Manual, December 1998.

AD. **DELIVERY**: After receipt of order, unless a longer delivery period is specified on purchase order, delivery and installation shall be effected within a reasonably prompt time frame but in no event will the time frame be longer than the delivery period specified on price sheet for the product ordered.

AE. **DELIVERY AND STORAGE**: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Owner will not assume any responsibility for receiving these shipments. Contractor shall check with the Owner and make necessary arrangements for security and storage space in the building during installation.

AF. **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.

AG. **ASBESTOS**: Whenever and wherever during the course of performing any work under this contract, if the Contractor discovers the presence of asbestos or suspects that asbestos is present, the contractor shall stop the work immediately, secure the area, notify the Building Owner and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed. Contractor shall not use any asbestos containing materials in the performance of this contract.

AH. **AUDIT**: The Contractor hereby agrees to 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.

AI. **FINANCIAL STATEMENT**: The ordering entity reserves the right to require the successful Bidder to supply the latest independently audited financial statement to DGS/DPS before any award is made.

AJ. **STATE USE TAX**: The Department of Taxation has determined that permanently glued down carpet is subject to State use tax.

AK. **SAMPLES FOR DISTRIBUTION TO AGENCIES**: Upon request, the Contractor or manufacturer shall furnish sample book of items awarded directly to the using agency or public body

AL. **INSTALLATION**: Contractor shall be responsible for installation of carpet in accordance with the Virginia Uniform Statewide Building Code, the manufacturer's instructions and these specifications.

1. The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that may be utilized, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor shall be fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees. The contractor while on the job site, shall have at least one employee whom is certified by the carpet manufacturer of the delivered carpet as qualified to install the specified carpet.

2. Any damage to existing fixtures, utilities or finished surfaces resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's sole expense.

3. A minimum of twenty-four (24) hour advanced notice shall be given to agency representative to allow for preparation of the work site and/or removal and relocation of furniture by agency personnel. If adequate notice is not given, contractor shall be responsible for any incurred expenses due to furniture movement.

4. Carpet ordered for direct glue down shall be installed using manufacturer's recommended adhesive, trowel size and application rate. Seam sealer shall be used on all seams and butt joints and applied as per the manufacturer's recommendations.

5. Carpet ordered for installation over padding shall be installed using proper pad adhesive and pad tape. Carpet shall be seamed using manufacturer's recommended seaming tape and all lengths over 12 feet shall be power stretched. All lengths over 30 feet shall be stretched by a senior power stretcher.

6. Carpet ordered for double stick installations shall be installed using the carpet and pad manufacturer's recommended adhesives, trowel size and application rate. Seam sealer shall be used on all seams and butt joints and applied as per the manufacturer's recommendation.

7. Carpet shall be laid according to recommendations of manufacturer. Carpet shall be laid flat, level without humps or ripples. Joints shall be subtle and imperceptible. All seams shall be trimmed in a neat and workmanlike manner.

8. Finish strips of metal and metal/vinyl shall be a standard commercial quality and shall be installed with both edges tight against door frame. Edge of carpet and finish strips shall be located underneath the door when closed. Finish strips shall be installed where carpet abuts hard surface flooring.

9. Carpet shall be securely attached to the floor in compliance with Americans with Disabilities Act.

10. Installed carpet shall be free of spots, dirt or soil, tears and frayed or pulled tufts.

11. Carpet shall be thoroughly vacuumed immediately after installation.

12. All debris shall be removed from the premises unless the ordering agency authorizes otherwise.

13. Contractor shall remove doors when necessary but will not be responsible for cutoff or reinstallation of the doors.

14. Punch list items and/or corrections to installations shall be responded to within 10 days of notification and failure to do so may be cause to terminate the contract for default. Agencies may not withhold the total invoice amount awaiting repairs to be completed. The amount to be withheld will not exceed 5% of the invoiced amount for the areas awaiting repairs.

15. For capital outlay installations, when required by the agency, the contractor may be required to work with the general contractor and/or architect.

16. Any installation is subject to verification by State inspector or independent agent engaged to represent the State for actual yardage required by institution involved. Any installation consuming more than 3% over the number of square yards within a given area shall be supported by seaming diagram showing waste and submitted to the agency prior to invoicing. Center of door dimensions will be considered.

17. The carpet installer shall complete a Carpet Installation Certification (see Attachment A) as denoted herein upon satisfactory completion of each carpet installation. A copy of the certification shall be submitted with each Invoice with a copy to the Division of Purchases and Supply.

18. Upon completion of an installation job, a manufacturer's maintenance manual and/or cleaning instructions shall be supplied to the owner without cost to the ordering Agency. Dealers and manufacturers may be required to conduct training sessions for agency personnel on the care and cleaning of their carpet.

19. At the conclusion of the work, the Contractor shall demonstrate to the authorized owner’s representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

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

AM. **eVA Business-To-Government Contracts and Orders**: It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order.

a. For orders issued prior toAugust 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of $500 per order.

b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:

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

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

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

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/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.

ATTACHMENT A

COMMONWEALTH OF VIRGINIA
CARPET INSTALLATION CERTIFICATE

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

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

DATE: _____

SIGNATURE: _____

TITLE: _____

DISTRIBUTION OF COPIES:

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6th Floor
1111 EAST BROAD STREET
RICHMOND, VA 23219

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