

Notice of Cooperative Contract

CONTRACT # P10-004

Contract Title: Aurora Storage Products: Filing Systems Equipment

1	DATE:	05/22/13
2	CONTRACT PERIOD:	04/01/11-03/31/14
3	SUPERCEDES:	n/a
4	AUTHORIZED USERS:	See Below
5	CONTRACTOR'S eVA VENDOR ID#:	E74634
6	CONTRACTOR / VENDOR	Capital Office Systems
7	CONTRACTOR CONTACT	Name: Rick Toombs Phone: 804-751-0200 Fax: 804-751-0037 Email: ricktoombs@comcast.net
8	TERMS	Net 30
9	DELIVERY	n/a
10	F.O.B.	FOB Destination, Freight Included
11	CONTRACT PRICES	See Contract
12	DPS CONTRACT OFFICER	Name: Katherine Bosdell Phone: 804-786-2397 Email: katherine.bosdell@dgs.virginia.gov

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

AUTHORIZED USERS: This contract is the result of a competitive bid program and its use is Optional Use 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(D), 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.

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343, or against a bidder or offeror because of race, religion, color, sex national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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1. CONTRACTOR / VENDOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address	Contact Information (Name, Phone, Fax and Email)
Capital Office Systems, Inc.	E74634	10400 Connecticut Ave. #402 Kensington, MD 20895	Rick Toombs 804-751-0200 Fax: 804-751-0037 ricktoombs@comcast.net

2. GENERAL INSTRUCTIONS

State Agencies must:

- a. **Contact VA Correctional Enterprises (VCE) to inquire if they offer filing systems equipment.**
 - i. **If VCE does not offer filing systems equipment, the buyer must document the procurement file and may proceed with purchasing from this contract.**
 - ii. **If VCE offers filing systems equipment, the buyer must obtain a signed VCE Release Concurrence form which must be submitted to the Division of Purchases and Supply (DPS). After receiving the authorized signed form from DPS, the buyer may proceed with purchasing from this contract.**
 - b. **Refer to APSPM 10.21 in the “Participating Agencies” section for cooperative procurement contract administration procedures.**
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 the following link <http://eva.virginia.gov/learn-about-eva/files/VendorComplaintForm.doc>
 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. For the purchase of Aurora filing systems equipment only.
2. Cooperative contract offered through National Intergovernmental Purchasing Alliance Company (NIPA).
3. Principal Procurement Agency (PPA) Contact Information:

County of DuPage, IL

421 North County Farm Road, Room 3-400

Wheaton, IL 60187-3978

Contract Officer: Joan M. Morange, CPPB

jmorange@dupageco.org

4. PPA contract number: P10-004
5. Above contract number must be referenced on eVA purchase order.
6. Renewals remaining: 2 successive 1-year optional periods.
7. Vendor accepts Pcard.

4. SCOPE OF WORK / GENERAL & TECHNICAL SPECIFICATIONS

Capital Office Systems, Inc is the authorized dealer for Aurora filing systems equipment for this contract. Available products are: Times-2, Times-2 Xpress, Times-2 Elite, Quick Lok Shelving, Aurora Xpress, Aurora Mobile and Aurora Side-to-Side. Pricing is a discount off of list price and varies by order price and delivery requirements. Additional charges may apply for supplemental services. .

5. COMMODITY INFORMATION & PRICING

See pricing information below.



Contract includes: Filing and storage products, related equipment and support services such as design and installation.

Term:

Initial three year agreement from April 1, 2011 through March 31, 2014, with option to renew for two (2) additional one-year periods through March 31, 2016.

Pricing/Discount:

Pricing is a discount off list price and discounts vary by size of order and delivery requirements. Discounts for orders over \$500,000 are negotiable.

Products	Discounts are from List Price. Tiers are based on List Product Value of each order. Discounts for orders over \$500,000 are negotiable								
	\$1 - \$99,999			\$100,000 - \$249,999			\$250,000 - \$499,999		
	Loading Dock	Inside Door	Installed	Loading Dock	Inside Door	Installed	Loading Dock	Inside Door	Installed
Aurora Times-2 Speed	42.0%	40.0%	27.0%	52.0%	51.6%	42.0%	56.5%	56.1%	47.5%
Aurora Times-2 Xpress	42.0%	40.0%	27.0%	52.0%	51.6%	42.0%	56.5%	56.1%	47.5%
Aurora Times-2 Elite	42.0%	40.0%	27.0%	52.0%	51.6%	42.0%	56.5%	56.1%	47.5%
Aurora Quik Lok Shelving	34.0%	29.0%	11.0%	45.5%	44.0%	28.5%	46.0%	44.7%	31.0%
Aurora Xpress	34.0%	29.0%	11.0%	34.0%	32.5%	17.0%	33.0%	31.7%	18.0%
Aurora Mobile	47.0%	45.0%	27.0%	47.0%	46.4%	31.0%	49.5%	48.9%	34.5%
Aurora Side-to-Side	35.0%	32.0%	12.0%	39.0%	37.5%	22.0%	41.5%	40.1%	26.5%

Installation & Delivery Service: The service option discounts include "standard" services only, subject to conditions listed below. The discounts are "not to exceed" percentages that may be lower as quoted by the servicing dealer dependent upon specific project conditions. Additional charges and services shall be negotiated in advance of the service being performed.

Standard Services are Subject to the Following Conditions:

1. Installation will be performed during normal weekday hours.
2. Adequate facilities for delivery, unloading, moving and staging/storing the product during the installation process.
3. Service work shall not be hindered by other trades.
4. Electric, heat and elevator service will be furnished without charge.
5. The immediate area shall be complete and free of debris including carpet/flooring installation before delivery.
6. Any work requiring a licensed electrician is the responsibility of the agency.

Pricing for additional and supplemental charges may be found [HERE](#).

Ordering/Delivery/Installation:

Aurora Storage Products/Richards-Wilcox, Inc. and authorized dealers nationwide will assist with selection, specification, delivery and installation.

Additional Charges

Additional Charges May Apply for

*If there are other conditions that would cause additional charges to be applied please list and define how these will be charged for. Service percentages should be expressed as an additional percent of the total product list value

Service	Percent or Per Labor Hour Additional Charge
Inside Delivery-Upper Levels Non-Seating	\$50 additional per hour
Inside Delivery-Upper Levels Seating	NA
Union & Prevailing Wage Non Seating	\$50 additional per hour
Union & Prevailing Wage Seating	NA
Major Metro Market and Upper Floor Installation	\$50 additional per hour
Installation outside of a 100 mile range of a the servicing dealer	\$50 additional per hour
Aurora Quik-Lok Shelving, Aurora Xpress orders below \$6,000 List	10% of project list price

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6. GENERAL TERMS AND CONDITIONS

See Cooperative Contract Addendum below.

7. SPECIAL TERMS AND CONDITIONS

See Cooperative Contract Addendum below.

VIRGINIA COOPERATIVE CONTRACT ADDENDUM

This Cooperative Contract Addendum ("Addendum") is an agreement between the Commonwealth of Virginia, through its Department of General Services' Division of Purchases and Supply ("DGS") and Aurora Storage Products Inc. ("Contractor"), having its principal office at 600 South Lake Street, Aurora, IL 60506. This Addendum relates to contract #P10-004, dated April 1, 2011, between the Contractor and the County of DuPage, IL ("Lead Entity") and further identified as follows: Filing Systems Equipment, including any future amendments that may be made to it (the "Cooperative Contract").

Pursuant to Va. Code §§ 2.2-4304(B), 2.2-1110, and 2.2-1111, authorities, departments, agencies, and institutions of the Commonwealth of Virginia can purchase non-technology goods and services under cooperative contracts only when authorized by DGS or statutorily exempted from the above Code provisions. Contractor wishes to make the Cooperative Contract available for use by such entities. DGS is willing to permit such use only if certain contractual provisions apply to such purchases, as required by Virginia state law or policy. In consideration of the convenience of using the Cooperative Contract and this Addendum without having to identify and negotiate revisions to all the particular provisions of the Cooperative Contract that may be affected, and in consideration of the resulting purchases, the Contractor and DGS agree as follows:

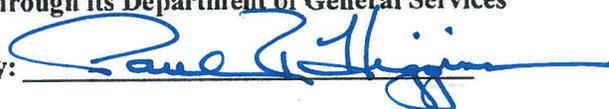
1. **Purchases Subject to this Addendum.** This Addendum shall apply automatically to every purchase that any authority, department, agency, or institution of the Commonwealth of Virginia makes under the Cooperative Contract. (No specific reference to this Addendum is required.) However, this Addendum shall not apply to purchases made by the College of William and Mary, George Mason University, James Madison University, Longwood University, Old Dominion University, Radford University, University of Virginia, Virginia Commonwealth University, Virginia Polytechnic Institute and State University, Virginia Military Institute, or other State entities that are exempt from Va. Code § 2.2-4304(B), § 2.2-1110, and § 2.2-1111. Counties, cities, towns, and other political subdivisions in Virginia may elect to have this Addendum apply to their purchases under the Cooperative Contract by placing their purchase order through the Commonwealth's electronic procurement system known as "eVA." In this Addendum, "Purchasing Agency" means any entity that makes a purchase that is subject to this Addendum.
2. **Virginia Terms and Conditions for Covered Purchases.** The attached "Virginia General Terms And Conditions" and attached "Cooperative Special Terms and Conditions" are hereby incorporated in this Addendum. This Addendum shall be deemed a part of the contract governing any purchase that a Purchasing Agency makes under the Cooperative Contract. To the extent necessary to give full effect to this Addendum, the provisions of this Addendum shall supersede any provision of the Cooperative Contract that limits or is inconsistent with this Addendum.
3. **Supervisory Role of DGS.** The provisions of this Addendum cannot be waived or modified by any Purchasing Agency. This Addendum is for the benefit of, and is enforceable by, each Purchasing Agency and DGS, or either of them. Any payment or other obligation for orders or purchases shall be solely the responsibility of the Purchasing Agency and not DGS. Nothing in this Addendum shall limit DGS's right and authority to approve or disapprove future use of the Cooperative Contract by Purchasing Agencies.
4. **Adjustments to Cooperative Contract.** This Addendum does not prevent the Contractor and a Purchasing Agency from supplementing or altering the Cooperative Contract solely for that Purchasing Agency's order; however, any adjustments must be within the general scope of what is included in the contract. In addition, this Addendum does not prevent the Contractor and Lead

Entity from supplementing or altering the Cooperative Contract for orders placed after the Purchasing Agency has notice of such amendment. However, in both cases, if any such additional or different provision or modification is inconsistent with a provision of this Addendum, the inconsistent provision shall not apply to Purchasing Agencies and shall be superseded by the Addendum provision. The Contractor shall promptly notify DGS of any amendments to the Cooperative Contract made by the Contractor and Lead Entity.

- 5. **Overlapping Terminology.** This Addendum uses Virginia provisions, which include words or phrases that may also appear in the Cooperative Contract or other documents originating with the Contractor or Lead Entity, and may even be given specific definitions in the Cooperative Contract. Any such overlapping terminology is coincidental and not intended to alter the meaning of the words as used in the Virginia provisions. Similarly, the fact that the Contractor and DGS have agreed to certain definitions in this Addendum shall not be deemed to affect the meaning of those words as used in the Cooperative Contract, unless the intention to do so is clearly stated.
- 6. **Notices.** Unless either Party provides the other Party with written notice of a different name and address for notices, any notices between DGS and the Contractor shall be sent to the representative who signed this Addendum, at the physical or electronic address shown below such signature.
- 7. **Applicable Law and Venue.** This Addendum shall be governed solely and in all respects by the laws of the Commonwealth of Virginia without regard to its choice-of-law rules, and any litigation with respect thereto shall be brought solely in the courts of the Commonwealth.
- 8. **Complete Agreement; Modification.** This two-page document, together with the attached "Virginia General Terms And Conditions" and attached "Cooperative Special Terms and Conditions," constitute the complete and final expression of the agreement between DGS and the Contractor regarding any purchase that a Purchasing Agency makes under the Cooperative Contract. This Addendum can be modified only in a writing signed by DGS and the Contractor.

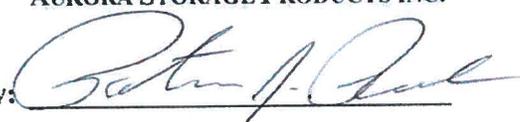
IN WITNESS WHEREOF, the parties hereby execute this Addendum, intending to be bound.

COMMONWEALTH OF VIRGINIA
Through its Department of General Services

By: 

Printed Name: Paul R. Higgins
Title: Procurement Manager
Date: 3-5-2013

AURORA STORAGE PRODUCTS INC.

By: 

Printed Name: Patrick J. Reeks
Title: Government Sales Manager
Date: March 5, 2013

Address for Notices:

Division of Purchases and Supply
Department of General Services
Patrick Henry Building, 6th Floor
1111 E. Broad St.
Richmond, VA 23219
Email: paul.higgins@dgs.virginia.gov

Address for Notices:

Aurora Storage Products, Inc.
600 S. Lake St.
Aurora IL 60506

VIRGINIA GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** The Addendum, Cooperative Contract, and every related purchase order by a Purchasing Agency (all of the foregoing being referred to collectively and individually in this Addendum as the "contract") are subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into the contract in their entirety. The procedure for filing contractual claims against any authority, department, agency, or institution of the Commonwealth of Virginia is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** The contract shall be governed solely and in all respects by the laws of the Commonwealth of Virginia without regard to its choice-of-law rules, and any litigation with respect thereto shall be brought solely in the courts of the Commonwealth. The Purchasing Agency and the Contractor are encouraged to resolve 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:** Contractor certifies to the Commonwealth that it 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 the 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:** The Contractor certifies that its bid or proposal underlying the contract was made without collusion or fraud and that it did not offer or receive any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with such bid or proposal, and it has 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:** 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:** Contractor certifies that it is 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 the contract, nor is it an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By acceptance of the Purchasing Agency's payment for a purchase order under the contract, the Contractor conveys, sells, assigns, and transfers to the Purchasing Agency 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 Purchasing Agency under that purchase order.
- H. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered, and accepted shall be billed to the Purchasing Agency and submitted by the Contractor directly to the payment address shown on the purchase order. 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). Any payment or other obligation for orders or purchases shall be solely the responsibility of the Purchasing Agency that placed the order and shall not be an obligation of the Department of General Services.
 - 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 the contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, which shall be the same 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. For purchase orders issued by any Purchasing Agency, the Contractor is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Purchasing Agency for the proportionate share of the payment received for work performed by the subcontractor(s) under the purchase order; or
- (2) To notify the Purchasing 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 Purchasing Agency, 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 or Purchasing Agency.

3 The Commonwealth of Virginia encourages Contractors and subcontractors to accept electronic and credit card payments.

I. **DRUG-FREE WORKPLACE:** During the performance of the 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 purchase order issued by a Purchasing Agency to the 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.

J. **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 eprocurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All contractors must register in eVA and pay the Vendor Transaction Fees specified below.

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

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

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

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

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

- K. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Purchasing Agency shall be bound under the contract only to the extent of the funds legally available or which may hereafter become legally available for the purpose of the contract.
- L. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** If the Contractor is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Contractor 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. If the Contractor is described above, it 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. The Purchasing Agency may void any purchase order if the Contractor is described above and fails to remain in compliance with the provisions of this section.
- M. **UNAUTHORIZED TERMS:** Any provision of the contract that purports to do the following shall be of no effect and shall not be deemed a part of the contract even if specifically agreed to by the Purchasing Agency: (1) requiring the Commonwealth or Purchasing Agency to indemnify or hold the Contractor, its subcontractors, suppliers, or any of their officers, agents, or employees harmless; (2) imposing interest charges contrary to that specified by the Code of Virginia, § 2.2-4347 through 2.2-4354; binding the Commonwealth or Purchasing Agency to any arbitration process; (3) obligating the Commonwealth or Purchasing Agency to pay costs of collection or attorney's fees; (4) granting the Contractor a security interest in property of the Commonwealth or Purchasing Agency; (5) prohibiting the Commonwealth or Purchasing Agency from disclosing prices; (6) prohibiting the Commonwealth or Purchasing Agency from complying with any law applicable to them; or (7) bestowing any right or incurring any obligation that is beyond the legal authority of the Purchasing Agency's representative to bestow or incur on behalf of the Commonwealth or Purchasing Agency.
- N. **PRECEDENCE OF TERMS; COOPERATIVE SPECIAL TERMS AND CONDITIONS:** If there is any inconsistency within this Addendum, such inconsistency shall be resolved in the following order of precedence: (1) Pages 1 and 2 of this Addendum; (2) Virginia General Terms and Conditions "A" through "N"; (3) the attached Cooperative Special Terms and Conditions; and (4) Virginia General Terms and Conditions "O" through "W."

- O. **QUALIFICATIONS OF CONTRACTOR:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods, and the Contractor shall furnish to the Commonwealth all such information and data for this purpose as may be requested.
- P. **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.
- Q. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- R. **CHANGES TO THE PURCHASE ORDER:** Changes can be made in connection with a purchase order from a Purchasing Agency in any of the following ways:
1. The parties (Purchasing Agency and Contractor) may agree in writing to modify the scope of the purchase order. An increase or decrease in the price of the purchase order resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the purchase order.
 2. The Purchasing Agency may order changes within the general scope of the purchase order at any time by written notice to the Contractor. Changes within the scope of the purchase order 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 Purchasing Agency shall compensate the Contractor 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 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.
- S. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Purchasing Agency, 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.

- T. **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 the contract to any Purchasing Agency shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- U. **TRANSPORTATION AND PACKAGING:** Contractor certifies and warrants 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.
- V. **INSURANCE:** Contractor certifies that it will have the following insurance coverage at the time the cooperative contract addendum is awarded for goods when installation is required, services, and construction. The Contractor further certifies that the Contractor and any subcontractors will maintain these insurance coverages 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.)
- W. **CURRENCY:** The Contractor shall state prices in US dollars.

COOPERATIVE SPECIAL TERMS AND CONDITIONS

No Cooperative Special Terms and Conditions are agreed to for this Addendum.