



COMMONWEALTH OF VIRGINIA

DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219-1199

REQUEST FOR PROPOSAL (RFP) #14865

PHARMACEUTICAL DISTRIBUTION SERVICES OF NALOXONE

Issue Date: June 9, 2023 • Due Date/Time: June 28, 2023 at 2:30 P.M E.T

Contract Officer: Tiffany Walker • Email Address: tiffany.walker@dgs.virginia.gov
Alternate: Elizabeth Prunkl • Email Address: elizabeth.prunkl@dgs.virginia.gov

USING AGENCY AND/OR LOCATION WHERE WORK WILL BE PERFORMED: All Commonwealth of Virginia agencies, institutions of higher education, or other public bodies (collectively "Authorized Users") as defined in the Code of Virginia §2.2-1110, 2.2-1120, and 2.2-4301.

PERIOD OF CONTRACT: The initial period of the contract is anticipated to be from September 1, 2023 – August 31, 2025, with three (3) optional one-year renewal periods.

PROPOSAL SUBMISSION: All proposals must be received by the date and time shown for this solicitation by one of the following means listed below. Any paper proposals received after the stated time and date will be marked late and retained unopened in the file. **Refer to Section IV Proposal Preparation and Submission Instructions.**

Physical Delivery Address:

Department of General Services/Division of Purchases and Supply
1111 E. Broad Street, 6th Floor, Richmond, VA 23219

Electronic Response Submission: Submitted via eva.virginia.gov

INQUIRIES FOR INFORMATION: Questions regarding the solicitation **must be submitted in writing only** to Tiffany Walker via email at tiffany.walker@dgs.virginia.gov AND Elizabeth Prunkl at elizabeth.prunkl@dgs.virginia.gov, no later than 5:00 P.M E.T on June 16, 2023. Offeror should identify the email by noting the solicitation number RFP #14865 in the subject line. Responses to clarifications may be posted in eVA's Virginia Business Opportunities (VBO). The identity of Offeror will not be published with the response. Formal changes to the solicitation, including but not limited to, contractual terms and procurement requirements, will only be changed by formal written addendum to the solicitation.

PRE-PROPOSAL CONFERENCE: A pre-proposal conference will not be conducted for this procurement.

In compliance with this Request for Proposal (RFP) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all goods and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

Name of Firm: _____

Street: _____

Street: _____

City/State: _____

Zip Code: _____

eVA ID: _____

DUNS: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

NOTE: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343.1 or against an Offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.f. in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in the Request for Proposal.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. PURPOSE:	3
II. BACKGROUND AND/OR HISTORICAL SALES DATA:	3
III. STATEMENT OF NEEDS:	4
IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:.....	4
V. EVALUATION AND AWARD CRITERIA:	10
VI. REPORTING REQUIREMENTS:	10
VII. PRE-PROPOSAL CONFERENCE:	11
VIII. GENERAL TERMS AND CONDITIONS:	11
IX. SPECIAL TERMS AND CONDITIONS:	19
X. INVOICES AND PAYMENT:	24
XI. PROPOSED PRICING:	25
XII. ATTACHMENTS:	25

I. PURPOSE:

The intent of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract with one qualified supplier, to reduce operating costs and obtain the best pricing, through competitive negotiations for Pharmaceutical Distribution Services of Naloxone to all Commonwealth of Virginia agencies, institutions of higher education, or other public bodies (collectively “Authorized Users”) as defined in the Code of Virginia §2.2-1110, 2.2-1120, and 2.2-4301. If the Commonwealth deems it more advantageous, multiple awards may be made.

This RFP and resulting contract is also being conducted on behalf of other public bodies, including non-Commonwealth of Virginia public bodies, through a Master Service Agreement (“Agreement”) managed by the Commonwealth of Virginia, Department of General Services (DGS), Division of Purchases and Supply (DPS), during the term of the agreement, or during any subsequent renewal periods thereof.

Any contract that may result from this solicitation will be a mandatory-use term contract for Commonwealth of Virginia Executive Branch State Agencies. For all other public bodies, it will be an optional-use term contract.

II. BACKGROUND AND/OR HISTORICAL SALES DATA:

Virginia has committed funds comprised of general state funds, non-general state funds (e.g. opioid abatement funds, American Rescue Plan Act funds), federal funds (e.g., State Opioid Response, SOR, and SAMHSA First Responder, etc.) earmarked for the purchase and distribution of naloxone.

From January 2022-July 2022, the Virginia Department of Health (VDH) No-Cost Naloxone Distribution Program experienced a 52% increase in requests for naloxone kits. Data on kits requested based on continued distribution to all eligible sites thought this program projected an estimated monthly need of 12,000 naloxone 4 mg nasal spray kits, for a total of 144,000 kits for eligible entities for the entirety of FY 23 (July 1, 2022 – June 30, 2023).

Naloxone is distributed based on demand from entities. This process continues to evolve in Virginia. Virginia has recently reformed and realigned an intra-agency and interagency task force to address pillars within the Governor’s behavioral health system transformation plan, including targeted support for substance use disorder (SUD) and efforts to prevent overdose. Task force members continue to evaluate and perform analysis utilizing data-driven prioritization model (i.e., update fact base) of statewide geographic need for naloxone and other harm reduction supports and services, including OD risk mapping. The task force also designs and implements internal and external dashboards to increase state and community access to key data regarding the SUD crisis and SUD treatment and recovery supports.

The goal of the RFP is to contract with a qualified vendor(s) who can provide the best plan/approach to commit to a dedicated supply of Naloxone, while providing a competitive price.

VDH currently purchases naloxone utilizing pricing negotiated through a national cooperative group purchasing contract, for government facilities that provide healthcare services. This contract vehicle creates and shares valuable savings through competitively bid and aggressively negotiated contracts from vendors including pharmaceutical wholesaler, manufacturers and medical supply vendors. Additionally, deeper cost savings include discounted cost of goods price and eligible wholesaler credits/sharebacks to help reduce costs. Therefore, the cost of naloxone through this solicitation will need to account for the price saving and discounts provided.

III. STATEMENT OF NEEDS:

The successful Offeror(s) shall furnish all labor, supervision, equipment, materials, insurance, and incidentals to provide pharmaceutical distribution services of Naloxone in compliance with this specification, and terms and conditions identified herein.

A. General Requirements:

At a minimum, the successful Offeror shall:

1. Provide FDA approved prepackaged Naloxone 4mg nasal spray kits, to include 2 doses per kit in manufacturer sealed cases in bulk quantities.
2. Provide products with all applicable labels and warnings as ordered.
3. Provide products with no less than an eighteen (18) month shelf-life upon delivery which is fit for consumption.
4. Provide policies and procedures applicable to the state, federal and local laws concerning the storage and dispensing of prescription drugs.

B. Delivery Requirements:

1. The successful Offeror shall deliver freight FOB.
2. It is preferred the successful Offeror deliver palletized products on a weekly basis, upon receipt of orders. However, products shall not be delivered less than bi-monthly.
3. Unless otherwise stated on the individual purchase order, the successful Offeror shall deliver products to:

Warehouse Delivery:

Virginia Dept. of Health – Central Pharmacy
Monroe Building
101 N 14th Street, Room S-45
Richmond, VA 23219

Delivery hours are Monday-Friday 8:30am – 4:00pm, not including state holidays.

C. Additional Products:

Offerors may, at their discretion, propose additional naloxone related products to the Commonwealth, to include different formulations and methods of administration. Additional products will not be evaluated in the solicitation award. Any resulting contracts that contain additional products, these products will be considered for optional-use by the Commonwealth.

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

A. General Instructions:

1. RFP Response: In order to be considered for selection, Offerors must submit to the issuing agency a complete response to this RFP as follows:

- a. One (1) full paper original marked "ORIGINAL".
- b. One (1) redacted paper copy marked "REDACTED". The redacted version of the proposal must have all proprietary information deleted that has been marked as proprietary. Section numbers which are redacted should be identified as follows:

Example: Section 3, paragraph B: "Redacted". The redacted versions of the proposal must be carefully edited, altered, and refined by the Offeror in order to protect and maintain complete confidentiality of protected information. The issuing agency will not accept responsibility for any public disclosure of proprietary information that is a result of improper redaction by the Offeror.

- c. One (1) USB drive containing full copies of the proposal marked "ORIGINAL" and "REDACTED", if responding by paper information that is a result of improper redaction by the Offeror.
- d. The entire proposal response shall be limited to thirty (30) typed, single-sided, pages. Attachments required to be returned do not count towards page count.
- e. Offerors who propose additional products are given an allowance to exceed thirty (30) page limit, allowing three (3) additional pages for each product offered.
- f. Page size shall be 8½ x 11 inch (larger pages are allowed for figures or tables, but they must be folded into the overall proposal and used sparingly).
- g. At least 11-point font shall be used.

No other distribution of the proposal shall be made by the Offeror.

2. Proposal Preparation:

- a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the issuing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the issuing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents, which cross-references the RFP requirements. Information, which the Offeror desires to present, that does not fall within any of the requirements of the RFP, should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a

major negative impact on the suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an Offeror to satisfy a “must or “shall” requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offeror’s proposal.

- e. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. Offeror shall complete and return Attachment B – Proprietary and Confidential Information. The classification of an entire proposal document or prequalification application, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal. If, after being given reasonable time the Offeror refuses to withdraw an entire classification designation, the proposal will be rejected.

3. Offeror Submission Requirements:

- a. RFP #14865 is a Request for Proposal; therefore, proposals submitted via e-mail or fax WILL NOT be accepted. Sealed proposals will be received until the closing date and time provided in the solicitation. Any proposal received after the closing date and time specified in the solicitation will not be considered and will be date and time stamped, marked “late” and retained unopened in the procurement file.

Prior to the due date, Offerors should:

- Check the status of the solicitation on eVA at www.eva.virginia.gov by clicking on Business Opportunities and then click on Virginia Business Opportunities (VBO) for any updates, changes, amendments, cancellations, etc.;
- Check the solicitation in VBO for all attachments and documents to be completed and submitted; and
- Complete all attachments, amendments, exhibits, product information, etc. and attach electronically to the Offeror’s electronic submission.

Offerors are solely responsible for reviewing, complying, and returning a complete proposal. Changes to the solicitation’s forms or formats are prohibited except where clearly instructed and permitted.

- b. Electronic proposal submission with required documents attached is required. Offeror must be registered in eVA in order to submit an electronic proposal.

The following are instructions for submitting an electronic proposal:

- a. Go to www.eva.virginia.gov;
- b. Click on “I Sell To Virginia”;
- c. Click on “eVA Supplier Training”; and

d. Click on “Viewing and Responding to Solicitations Video”.

If an Offeror need assistance submitting an electronic response, the Offeror must contact eVA Customer Care at 866-289-7367 or email eVACustomerCare@dgs.virginia.gov.

c. Identification of Sealed Envelope for Paper Proposal:

When submitting a paper proposal response, Offeror must return the completed and signed response in a sealed envelope identified as shown below. If the proposal is not submitted as shown, Offeror risks that the envelope may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other unrequested correspondence or other proposals should be placed in the envelope.

OFFEROR NAME	POSTAGE
STREET OR BOX NUMBER	
CITY, STATE, ZIP CODE	
DGS/DIVISION OF PURCHASES AND SUPPLY	
SEE ITEM D. FOR PROPOSAL SUBMISSION ADDRESS INSTRUCTIONS	
RFP #: as shown in eVA VBO	
RFP TITLE: as shown in eVA VBO	
CLOSING DATE: as shown in eVA VBO	
CLOSING TIME: as shown in eVA VBO	
OFFEROR’S eVA ID#	

IT IS THE OFFEROR’S RESPONSIBILITY TO ENSURE THAT THE PROPOSAL IS DELIVERED TO THE CORRECT DELIVERY ADDRESS AND LOCATION BEFORE THE CLOSING DATE AND TIME. DGS/DPS SHALL NOT BE RESPONSIBLE IF A PROPOSAL IS NOT DELIVERED BY THE CLOSING DATE AND TIME. LATE PROPOSALS WILL NOT BE OPENED AND WILL BE RETAINED UNOPENED IN THE PROCUREMENT FILE.

d. Proposal Submission Address and Building Security Instructions:

1. Express Delivery Service: Offeror shall mail the proposal to the Commonwealth of Virginia, Department of General Services / Division of Purchases and Supply, 6th Floor Receptionist/Proposal Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror should allow ample time for delivery.

2. U.S. Postal Service: Offeror shall mail the proposal to the Commonwealth of Virginia, Department of General Services / Division of Purchases and Supply, 6th Floor Receptionist/Proposal Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for the package to be processed through the Commonwealth’s Mail Security Processing System prior to delivery to Receptionist/Proposal Receiving.

3. Hand-Delivered/Courier: Offeror shall deliver the proposal to the Commonwealth of Virginia, Department of General Services / Division of Purchases and Supply, 6th Floor Receptionist/Proposal Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for parking, walking to the building, and security screening procedures. All visitors are required to enter the Patrick Henry

Building through the Darden Garden entrance facing the State Capitol (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:

- a. Present a valid and current picture ID;
- b. Pass through metal detectors/security wands;
- c. Permit all bags/packages, etc. to be searched by Capitol Police or security personnel;
- d. Sign in at Security Desk; and
- e. Wait to be escorted to the 6th floor to submit the proposal to the receptionist where the proposal will be date and time stamped.

4. Oral Presentation: Offeror who submit proposals in response to this RFP may be required to give an oral presentation of their proposal to the issuing agency. This provides an opportunity for the Offeror to clarify or elaborate on their proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the issuing agency and may or may not be conducted.

B. Specific Proposal Submission Instructions:

Proposals should be as thorough and detailed as possible so that the issuing agency may properly evaluate your capabilities to provide the required goods and/or services. The issuing agency has identified a number of items that must be addressed in the proposal as Submission Requirements. Offerors should respond to these by identifying the TAB number, the Submission Requirement followed by the Offeror's response. Offerors should not conclude that responding to each submission requirement will result in a complete proposal, as there other requirements for response within the solicitation than these items. Offerors are required to submit the following items as a complete proposal (organized under the following Section Tabs):

TAB 1: RFP, Addenda, and Attachments

- A. Return the RFP Cover Sheet (Page 1) and all addenda acknowledgments, if any, signed and completed.
- B. Return Attachment A – Exceptions to RFP #14865 completed
- C. Return Attachment B – Proprietary and Confidential Information completed
- D. Return Attachment C – Vendor Data Sheet completed
- E. Return Attachment D – State Corporation Commission Form completed
- F. Return Attachment E – Pricing Schedule completed

TAB 2: Specific Plan or Methodology/Approach

Describe your firm's approach to providing pharmaceutical distribution services of Naloxone and how your firm will meet the requirements in Section III. Statement of needs.

Additionally, your proposal shall cover how your firm plans to handle product availability in the pharmaceutical industry market and distribution thereof. The Commonwealth wants to see how Offerors plan to accommodate change and future improvements into the contract.

TAB 3: Qualifications and Experience of Firm

Describe your firm's background, experience, and qualification related to this type of goods/services that should include, but not be limited to, the following:

A. Organizational Structure

1. Provide a detailed written narrative statement of the firm's organizational structure and history, locations, including the principals and their background.
2. If the company is a wholly-owned subsidiary of a 'parent' company, then it must provide all information required on both firms. Include the legal name and address and the legal form of company (partnership, corporation, joint venture, etc.).
3. If proposing in a joint venture, then identify all members of the joint venture and provide all information required within this section for each member of the venture.

B. Demonstrated Knowledge and Experience of Firm

1. Provide a detailed narrative describing the firm's qualifications and background in providing the type of goods/services required in the Statement of Needs.
2. Describe specialized experience in the type of goods/services required in the Statement of Needs.

C. Litigation

Disclose any information about pending legal proceedings or business litigation against your firm, any officer, or principal. If necessary, provide an explanation and indicate the current status or disposition.

D. Clients

1. Provide a list of all the Offeror's clients comparable to the Commonwealth indicating the length of service with each account.
2. Provide a list of all clients lost within the last three (3) years which include:
 - a. A contact name and telephone number
 - b. Length of service at the account
 - c. Reason for loss

TAB 4: Qualifications and Experience of Key Personnel

Not applicable

TAB 5: Proposed Pricing

Offeror's shall include the completed Pricing Attachment along with any other requested pricing data as part of this tab.

It is the intent of the Commonwealth, volume pricing will reset each contract term, unless otherwise negotiated.

TAB 6: Small Business Subcontracting Plan

Not applicable

TAB 7: Appendices, Data and Other Submissions

Include any other appendices, data and other information necessary to support Offeror's proposal.

V. EVALUATION AND AWARD CRITERIA:

A. EVALUATION CRITERIA:

Proposals shall be evaluated by the evaluation team using the following criteria:

Evaluation Criteria	Point Value
Specific Plan or Methodology/Approach	25
Qualifications and Experience of Firm	25
Demonstrated Understanding of Statement of Needs and Pricing Justification	25
Proposed Pricing	25
TOTAL	100

Proposed pricing shall be calculated by adding Naloxone Distribution Quantities for all amounts under the Extended Price Column on Attachment E.

B. AWARD:

Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposal, including price, if so stated in the Request for Proposal. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation, if deemed to be in its best interest.

The Commonwealth may cancel this Request for Proposal or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous, *Code of Virginia, § 2.2-4359D*. Should the Commonwealth determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Offeror's proposal as negotiated.

VI. REPORTING REQUIREMENTS:

A. CONTRACTOR'S QUARTERLY REPORT OF SALES:

Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the DPS Contracting Officer. Failure to submit required information in a timely manner may result in cancellation of the Contract.

B. REPORTING SCHEDULES:

<u>Quarterly Report Period</u>	<u>Sales Months</u>	<u>Report Due</u>
1 st Quarter	Jan, Feb, Mar	April 15 th
2 nd Quarter	Apr, May, June	July 15 th
3 rd Quarter	July, Aug, Sept	October 15 th
4 th Quarter	Oct, Nov, Dec	January 15 th

C. CONTRACTOR SHALL:

1. Meet or conference call at least quarterly with the DPS Contracting Officer to review performance, usage under the contract, and discuss opportunities for improvements.
2. Provide any documentation or reports as requested by the DPS Contracting Officer.
3. Notify the DPS Contracting Officer, in writing, of any unresolved disputes or problems that have been outstanding for more than thirty (30) days.

VII. PRE-PROPOSAL CONFERENCE:

A pre-proposal conference has been waived and will not be conducted for this procurement.

VIII. GENERAL TERMS AND CONDITIONS:

The General Terms and Conditions are **MANDATORY** and shall be included verbatim in any Contract awarded.

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 process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "I Sell To Virginia".

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, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other 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: Applicable for all contracts over \$10,000:

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

F. DEBARMENT STATUS: By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

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

J. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or 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 resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. 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. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to

insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

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

K. PRECEDENCE OF TERMS: The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEPARTMENT 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 OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

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

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

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

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the

result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

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

P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract and procure all goods and/or services contracted for, 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.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

R. TRANSPORTATION AND PACKAGING: By submitting their bids, all offeror's certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

S. INSURANCE: By signing and submitting a bid or proposal under this solicitation, the offeror or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332

and 65.2-800 et seq. of the *Code of Virginia*. The offeror or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all coverage will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

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

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

U. DRUG-FREE WORKPLACE: Applicable for all contracts over \$10,000:

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.

V. 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, sexual orientation, gender identity, 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.

W. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND

ORDERS: The eVA Internet electronic procurement solution, web site 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 by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA; failure to register will result in the bid being rejected.

X. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

Y. SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD

PRIORITY: This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, offeror’s shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids.

Z. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, offeror’s shall state bid prices in US dollars.

AA. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:

A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

BB. CIVILITY IN STATE WORKPLACES:

The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass

equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

IX. SPECIAL TERMS AND CONDITIONS:

- A. AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. AWARD OF CONTRACT:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.

The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

- C. CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- D. CONTRACT PARTICIPATION – COOPERATIVE PURCHASING/USE OF AGREEMENT BY THIRD PARTIES:**

It is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body (to include government/state agencies, political subdivisions, etc.), non-Commonwealth participating entities, cooperative purchasing organizations, public or private health institutions access any resulting contract if authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) may be extended to the entities indicated in this solicitation to purchase goods and services in accordance with the contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from DGS. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Contractor.

- E. eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s). 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.
- F. RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for three (3) successive and optional one (1) renewal terms, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
- G. PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials should not to exceed the increase in the following index/indices: the Prescription Drugs category of the Table 2. of the Consumer Price Index of the U.S. Bureau of Labor Statistics, other applicable indices, market trends, and other supporting documentation will be used as guidelines to determine the reasonableness of increase requests. No price increases will be authorized for 180 calendar days after the effective date of the contract. Additional request(s) for a price increase may be submitted to the DPS Contract Officer no more than three times within the current term. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

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

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

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

- H. BID ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- I. EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for the Commonwealth's use and shall include all applicable freight charges; extra charges will not be allowed.
- J. LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.
- K. SAFETY DATA SHEETS:** Safety Data Sheets and descriptive literature shall be provided upon request with the bid for each chemical and/or compound offered. Failure on the part of the offeror to submit such data sheets may be cause for declaring the bid as nonresponsive/eliminated from further consideration.
- L. MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC):** Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services. Offeror's responding to this solicitation should note that acceptance of payment by purchase card is mandatory unless waived by DPS within 90 calendar days of contract award.

Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. 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. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

Level 1 - vendors provide basic charge 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 the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Supplier Vendor 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 **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

M. PERIOD FOR PERFORMANCE OF PURCHASE ORDERS: To be valid, a purchase order issued under this Contract must be issued during the term of the Contract. The period specified for performance of the purchase order may extend past the term of the Contract. If a notice terminating this Contract is issued, the notice shall be construed as applying only to the Contract and not to any existing purchase order, unless the notice expressly states the intent to terminate the purchase order.

N. QUANTITIES: Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

O. LOBBYING AND INTEGRITY: Offeror's are cautioned that communications with individuals other than the DPS Contracting Officer may result in incorrect and/or insufficient information being provided. In addition, the Offeror shall not, in connection with this or any other agreement with the Commonwealth of Virginia, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any state officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state officer or employee.

Upon request of the Commonwealth of Virginia's, Department of General Services, the Offeror shall provide any type of information deemed relevant to the Offeror's integrity or responsibility to provide the services or goods, described herein.

P. EXCLUSIVITY OF TERMS AND CONDITIONS: No employee or agent of the Commonwealth or Authorized User shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. No contractor shall be required to sign, from any employee or agent of the Commonwealth or Authorized Users, any additional agreements, contracts, or other documents that were not part of the original contract. Any documents signed by persons other than the Director of DPS or their authorized designee shall have no validity or effect upon the Contract.

Q. CONTRACTUAL DISPUTES: In accordance with Code of Virginia § 2.2-4363, contractual claims, whether for money or other relief, shall be submitted in writing to the Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to the Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

1. The Contractor may not invoke any available administrative procedure under Code of Virginia § 2.2-4365 nor institute legal action prior to receipt of the Commonwealth's decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes

appropriate action under Code of Virginia § 2.2-4364 or the administrative procedure authorized by Code of Virginia § 2.2-4365.

2. The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the contracting and Ordering Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.
3. In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor' remedies include the right to terminate any services hereunder.

R. DELIVERY: Delivery of goods or performance of services shall be within the number of calendar days stated below after receipt of order (ARO) by the offeror. The Agency requires the offeror to deliver within a reasonable time after ARO. If the offeror does not insert a stated delivery time in the blank below, the offeror will be deemed to offer delivery in accordance with the Agency's desired delivery time as stated below:

Agency's desired delivered time: 5 calendar days ARO

OFFEROR'S STATED DELIVERY TIME: _____ CALENDAR DAYS ARO

S. BID PRICES: Bid shall be in the form of a firm unit price for each item during the contract period.

T. E-VERIFY: EFFECTIVE 12/1/13. Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

U. FEDERALLY IMPOSED TARIFFS: In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in contractor's costs to a level that renders performance under the Agreement impracticable, the Commonwealth may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed 25% of the additional tariff imposed on the goods imported or purchased by the contractor that are provided to the Commonwealth under this Agreement.

Prior to the Commonwealth agreeing to a price increase pursuant to this Section, the contractor must provide to the Commonwealth, the following documentation, all of which must be satisfactory to the Commonwealth:

- evidence demonstrating: (i) the unit price paid by contractor as of the date of award for the good or raw material used to furnish the goods to the Commonwealth under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) contractor's payment

of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commonwealth to verify that the tariff is the cause of the price change.

- a certification signed by contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commonwealth at a lower cost from a different source located outside of the country against which the tariff has been imposed.

- a certification signed by contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the contractor would otherwise be unable to perform under this Agreement without such price increase.

- as requested by the Commonwealth, written instructions authorizing the Commonwealth to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by contractor.

If the Commonwealth agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Agreement:

- During the Term and for five (5) years after the termination of this Agreement, contractor shall retain, and the Commonwealth and its authorized representatives shall have the right to audit, examine, and make copies of, all of contractor's books, accounts, and other records related to this Agreement and contractor's costs for providing goods to the Commonwealth, including, but not limited to those kept by the contractor's agents, assigns, successors, and subcontractors.

- Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have the right to terminate this Agreement for the Commonwealth's convenience upon 15 days' written notice to contractor.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in the Commonwealth's contract price shall be reduced by the same amount and adjusted accordingly.

- Any material misrepresentation of fact by contractor relating in any way to the Commonwealth's payment of additional sums due to tariffs shall be fraud against the taxpayer's of the Commonwealth and subject contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

V. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as 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.

W. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

X. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact

business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

X. INVOICES AND PAYMENT:

A. INVOICES:

Contractor shall submit the invoice(s) to the address designated on the purchase order following acceptance by the Authorized User of goods and services rendered. No invoice may include any cost other than those identified in the purchase order referencing the Contract. Invoice(s) shall provide at a minimum:

- i. Name of Authorized User (the ordering entity)
- ii. Authorized User point of contact and phone/email
- iii. Description of the goods and/or services provided
- iv. Contract number
- v. Purchase order number
- vi. Invoice number
- vii. Invoice date
- viii. Invoice Amount

B. PAYMENT:

Payment will be made in accordance with the Virginia Prompt Payment Act. State Agencies will pay per §2.2-4350 of the Virginia Prompt Payment Act. Localities will pay per §2.2-4352 of the Virginia Prompt Payment Act. Payments will only be remitted after the receipt of valid invoice and verification of satisfactory goods received and/or completion of work. Payment may be made via a small purchase charge card (SPCC) (refer to the Mandatory Acceptance of Small Purchase Charge Card (SPCC) term and condition), check or EDI depending on how the Contractor is registered with the Department of Accounts. Utilization of the SPCC for payment shall not result in any additional fees (transaction fee, service charge etc.).

XI. PROPOSED PRICING:

Please see Attachment E. for pricing structure and to enter your firm's pricing.

XII. ATTACHMENTS:

- Attachment A – Exceptions to RFP #14865
- Attachment B – Proprietary and Confidential Information
- Attachment C – Vendor Data Sheet
- Attachment D – State Corporation Commission Form
- Attachment E – Pricing Schedule