COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT

Contract Number: 127-11-0001

This contract entered into this second day of May 2011, by **Byrd Brothers Emergency Services, LLC** hereinafter called the "Contractor" and Commonwealth of Virginia, Virginia Department of Emergency Management called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From: May 2, 2011 through May 1, 2014, with three, one year optional renewal periods.

The contract documents shall consist of:

(1) This signed form;

(2) The following portions of the Request for Proposal dated January 3, 2011:

(a) The Statement of Needs,
(b) The General Terms and Conditions,
(c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;
- Attachment 1, Date: March 31, 2011

(d) Addendums #1 & 2

(3) The Contractor's Proposal dated February 15, 2011 and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:	PURCHASING AGENCY:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

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

REQUEST FOR PROPOSAL (RFP)

Issue Date: January 3, 2011 RFP#127-11-0001

Title: COV Emergency Services

Commodity Code: 04008, 05554, 15580, 28558, 34518, 92939, 95236, 95237, 96206, 97540, 98154, 98338, 99000, 99029, 99030,

Issuing Agency: Commonwealth of Virginia
Department of Emergency Management
10501 Trade Court
Richmond, VA 23236

Location Where Work Will Be Performed: Locations throughout the Commonwealth of Virginia

Initial Period of Contract: From April 1, 2011 Through March 31, 2014, with options to renew for three, one-year periods.
Sealed Proposals Will Be Received Until: **February 15, 2011, at 3:00 p.m**.at the Trade Court Facility, 10501 Trade Court, Richmond, VA 23236, room number 1-39 for Furnishing the Goods/Services Described Herein.

All Inquiries For Information Shall Be Made **IN WRITING** and Directed only to: Peter Rigterink, VDEM Procurement Manager; Email: peter.rigterink@vdem.virginia.gov; or Telephone: (804.897.9735). Questions shall only be received up ten days prior to the closing date/time.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO:
Peter Rigterink, VDEM Procurement Manager, Room #: 1-39, 10501 Trade Court, Richmond, VA 23236

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

State Corporation Commission ID Number: _____ (See Special Terms and Conditions)
* Virginia Contractor License No. _____
Class:_____ Specialty Codes: _____

Name and Address Of Firm:
_____ Date: _____

_____ By: _____
(Signature In Ink)
_____ Name: _____
(Please Print)
_____Zip Code: _____ Title: _____

EVA Vendor ID or DUNS number _____ Phone: (_____)_____
E-mail: _____ Fax: (_____)_____

* PREPROPOSAL CONFERENCE: An optional pre-proposal conference will be held on January 13, 2011, at 10:00 a.m., at 10501 Trade Court, Richmond, VA 23236, Training Rooms A & B.

Check all that apply: ___ Small Business ___ Women-owned Business ___ Minority Business

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or an 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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1.0 PURPOSE: The purpose of this RFP is to solicit sealed proposals for pre-event/pre-negotiated (i.e. negotiated prior to the actual need based on occurrence of emergency) disaster service contracts between the Commonwealth of Virginia (COV) and resource contractors (Offerors). The contracts are for use by political jurisdictions within the COV acting under a local declaration of emergency and/or State Agencies representing the COV under the authority of the Governor or as outlined within a Governor's Declaration of Emergency. As part of the solicitation process, the COV will establish two groupings of Disaster Services Contracts:

The first group will be multiple award contracts. Contracts will be awarded to vendors that have nationwide asset capabilities able to respond to large-scale disasters with logistical and emergency response resources. This group shall be able to respond across the COV to a diverse range of disasters: manmade, biological, or natural.
The second group will be multiple award contracts, allowing smaller and local vendors to supply logistical and emergency response resources to State Agencies and Localities during small scale and local emergencies. This second group may submit their proposals based on commodities, resources, and services (Attachment D) and emergency response regions (Attachment E). Any Contractor submitting a proposal for this group shall be able to respond under emergency situation, with the commodities, resources, and/or services, in the regions identified in their proposal.

Offerors for both "groups" agree that by submission of a proposal, they are capable of and able to respond to request (s) for resources, commodities, and/or services by telephone within one hour of receiving notification. Offerors are required to provide emergency 24 hour contact information to be utilized during disasters. Failure to respond within one hour, five times over a period of three emergency events may result in removal from the contract. All offerors are strongly recommended to become familiar with the COV Title 44 Emergency Services and Disaster Laws.

Fixed priced, indefinite delivery contract (s) are to be awarded, only in preparation of or as a result of declared emergencies or disasters, through competitive negotiations, with multiple qualified contractors. The intent of the resulting contract(s) is to support the Virginia Department of Emergency Management (VDEM/Virginia Emergency Operations Center (VEOC), and agents utilizing this solicitation, with requests for goods/equipment/services upon their officially declaration of a local emergency. Contracts will be issued with no guaranteed quantity of goods/services, and the usage of this contract is wholly dependent upon the needs at the time of the emergency or disaster. Current information regarding this solicitation may be found at: www.eva.virginia.gov.

2.0 BACKGROUND: The Virginia Department of Emergency Management (VDEM) is a state agency that works closely with local government emergency managers, other state agencies, voluntary organizations, and federal agencies, such as the Federal Emergency Management Agency (FEMA), to ensure a comprehensive, efficient, and effective response to emergencies and disasters throughout the Commonwealth of Virginia (COV).

2.1 Information:

a. For the purpose of this solicitation and any resulting contract(s), VDEM is referred to as the "Contracting Agency". Agencies utilizing the services described herein and provided as a result of any contract awards will be referred to as "Participating Agencies" or "Authorized Users".

b. VDEM is responsible for:

i. Administering the resulting contract(s).

ii. Contract Changes, if required. Changes to the Scope of Work and or Contract will be made only upon executed approval of the Contracting Agency.

iii. Resolving disputes and interpreting terms and conditions.

2.2 Small, Women-Owned and Minority Business Participation: It is the policy of the COV to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages Contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnership, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, Offerors certify that all information provided in their response to this RFP is true and accurate. Failure to provide information required by the RFP will ultimately result in rejection of the proposal.

2.3 Any current emergency (statewide) contracts will remain in place until end dates specified and shall be replaced with contracts awarded through this solicitation process. Existing emergency contracts may be found at: www.eva.virginia.gov

3.0 STATEMENT OF NEEDS: The Virginia Department of Emergency Management (VDEM)/Virginia Emergency Operations Center (VEOC) is in need of an Emergency Response Company(s) (Offerors) that can provide equipment, goods, and services, to include additional manpower to provide assistance in emergencies and disasters. The Agency is looking for Contractors who would be able to respond to any of the following disasters: Hurricanes, Earthquakes, Tornadoes, Floods, Wildfires, Oil Spills, Ice Storms, hazardous Materials incidents, Terrorist Attacks, Weapons of mass destruction, disease-carrying vector control, Biological and Viral threats, Fires/explosions and other man-made or natural disasters. VDEM will need the contractor to provide personnel, equipment, goods and other material needed for the response to a disaster on an as-needed basis. The contractor(s) must have availability of a wide variety of emergency response and recovery resources such as generators, hazardous materials response equipment, disaster management personnel, see Attachment 2 for a more complete list of items. This Attachment is offered as a guide and is not intended to be a complete list of items that may be required. Offerors are encouraged to present a more comprehensive list of emergency items. The contractor(s) shall provide all labor, supervision, equipment, supplies, during or in preparation of emergencies and disasters as stated within to include loading, unloading, transportation to deliver, set-up if required, provide quality control, technical advice and reporting on all matters related to the contract. As requirements arise for specific quantities of items covered herein, the authorized individuals will place orders. CONTRACTOR(S) SHALL PROVIDE EQUIPMENT, MATERIAL AND/OR ANY ASSOCIATED SERVICES WITH DUE DILIGENCE AND RAPID RESPONSIVENESS FOR THE DURATION OF THE EMERGENCY.

3.1 Contractor Qualifications:

a. The Contractor shall be able to demonstrate the availability of adequate resources to fulfill the responsibilities listed below. The Contractor shall include trained staff with experience in the local, state, and federal regulatory process.

b. If required in response to the RFP, offeror must be available to make an oral presentation to VDEM program staff.

3.2 VDEM RESPONSIBILITIES: VDEM will furnish facilities, supplies, communications, and equipment at the Joint Field Office (JFO) to support the personnel supplied under this contract.

3.3 SCHEDULE: Time is of the essence for performance of this Contract. The Contractor agrees and understands that the services covered by this Contract will be immediately available during times of emergencies and disasters. VDEM reserves the right, if necessary, to acquire part or all of the services offered by the Contractor under this Contract from other available resources as deemed necessary in the best interests of the Commonwealth to meet this requirement.

4.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

4.1 GENERAL REQUIREMENTS:

4.1.1 RFP Response: In order to be considered for selection, offerors must submit a complete response to the RFP. One (1) original and five copies of each proposal must be submitted to the issuing State agency. The offeror shall also submit one electronic copy (compact disc preferred) of their proposal in MS Word format (Microsoft Word 2003 or compatible format). In addition, the offeror shall submit a redacted (proprietary and confidential information removed) electronic copy of their proposal.

4.1.2 Proposal Preparation:

a. An authorized representative of the offeror shall sign proposals. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. The Purchasing Agency may reject proposals, which are substantially incomplete or lack key information. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

b. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

c. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

d. 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, sub-letter 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 sub-letter should be repeated at the top of the next page. The proposal shall 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.

e. Each copy of the proposal shall be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

f. 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 Section 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 materials 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. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

g. All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses and minority-owned businesses must be submitted. If an offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after the receipt of vendor proposals.

h. All offerors who submit a proposal shall be financially responsible.

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

4.2 SPECIFIC PROPOSAL REQUIREMENTS:

Proposals should be as thorough and detailed as possible so that the Purchasing Agency may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

4.2.1 The complete RFP (including cover sheet) and all addenda acknowledgements, if any, signed and filled out as required.

4.2.2 Provide a letter of introduction. The contents of this letter must include the official name and address of the contractor submitting the proposal, and the name, address and telephone number of the person(s) who will be authorized to act on behalf of the offeror and bind the offeror to all commitments made in the proposal and negotiations. Briefly identify the benefits to the Commonwealth of using your firm's services instead of another firm's services – why contracting your firm's services would be the "best buy" for Virginia.

4.2.3 Completed Offerors Data Sheet, included as **Attachment A** to the RFP, and other specific items or data requested in the RFP.

4.2.4 A written narrative statement to include experience in providing the goods/services described herein and the demonstrated ability to provide Emergency Services. Offerors should include information substantiating their ability to provide adequate levels of service. Such information should include, but not be limited to:

- Experience in providing the services described herein along with a description of company structure;
- Approach to providing the service;
- Names, qualifications and experience of personnel to be assigned to the project;
- Offerors should clearly state the types of Emergency goods, equipment, and services they can provide;
- Location of office(s) and hours of operation;
- Describe your capability to offer a charge card payment program;
- Location, size and number of hubs or distribution points, if applicable;
- Description of facilities and operations that may be utilized in the performance of a declared emergency;
- Specify whether or not an account manager(s) will be assigned. Describe fully any services provided through the account manager, such as site visits, consultation, problem and/or dispute resolution regarding shipments and invoices, etc;
- Specific plans for providing the proposed services including: Offeror to show how they will provide the required services, to include **delivery procedures**. Also, include an explanation as to any planned use of sub-contractors;
- Areas of the COV have been divided into seven (7) regions. Offerors shall be very clear as to where goods, equipment, and/or services are to be provided. That is, **regions are to be specified**; and
- Pricing is to be inclusive of all costs (i.e. to include installation and delivery).

4.2.5 Return 12.0 ATTACHMENT C, identifying all proprietary information. (Note: Price cannot be declared proprietary, and neither can the entire proposal; therefore, do not place a confidential/proprietary statement at the beginning of the proposal that would apply to all pages, and do not place on every page. Also, do not copyright your proposal.)

4.2.6 The offeror must submit the following two attachments:

a. Planned involvement of small, women-owned and minority-owned businesses in the performance of the contract. (The format for submission of SWAM utilization plan data is included at Attachment 12.0 ATTACHMENT B herein).
b. Proposed Price(s). Indicate in the pricing schedule section of the RFP.

5.0 EVALUATION AND AWARD CRITERIA:

5.1 EVALUATION PROCESS: All proposals will be reviewed and evaluated by an Evaluation Committee. "Best Value" concepts will be used for the evaluation and award. "Best Value", means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs. The Commonwealth will consider award to other than the lowest priced offeror or other than the highest technically acceptable offeror. The committee will recommend the proposal(s) that most closely meet the requirements of the Commonwealth.

5.2 EVALUATION CRITERIA: Proposals shall be evaluated by the Purchasing Agency using the following criteria:

		POINT VALUE
5.2.1	Specific plans or methodology to be used in providing Goods, Equipment, Services, and time of delivery.	25%
5.2.2	Quality and quantity of equipment offered including their availability & suitability for the intended purpose.	20%
5.2.3	Experience in providing the goods and services/References	25%
5.2.4	Price	10%
5.2.5	Participation of Small, Women-owned, and Minority-owned Businesses	20%
	Total	**100%**

6.0 REPORTING AND DELIVERY REQUIREMENTS:

6.1 Provide all goods/equipment/services and reporting as described in the Statement of Needs, Section 3.0

6.2 Report Report on the participation of small, women-owned and minority-owned businesses (SWAM): Final Actual Involvement Report: The Contractor will submit, prior to completion or at completion of the contract and prior to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned, and minority-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value. A suggested format is as follows:

Business Class: (Small, Women-Owned and Minority-Owned)

FIRM NAME, ADDRESS, AND PHONE NUMBER	**TYPE GOODS/ SERVICES**	**ACTUAL DOLLARS**	**PLANNED DOLLARS**	**% OF TOTAL CONTRACT**
TOTALS FOR BUSINESS CLASS				

8.0 REQUIRED GENERAL TERMS AND CONDITIONS

GOODS AND NONPROFESSIONAL SERVICES

PIM 98-027

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

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

C. **ANTI-DISCRIMINATION:** By submitting their 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 or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over $10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

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

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

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

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

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

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

1. Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

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 ten 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 following:**
   - **Contract number or purchase order number;**
   - **Social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations);**
   - **Name, position, billing rate, hours of work, and total amount being billed (if staffing costs are incurred);**
   - **All billing rates shall be at state per diem rates (if applicable);**
   - **Any billing for travel shall be allowable only within the COV; and**
   - **Other billing requirements as may be deemed appropriate.**

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

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

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

e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia,* § 2.2-4363).

2. <u>To Subcontractors</u>:

a. A contractor awarded a contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

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, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF 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 offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

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

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

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

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

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

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

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

   c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of

the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

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

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

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

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

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

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.
   (**Note to Agency/Institution**: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverage should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability. When in the judgment of a procurement officer, these limits and coverage are not warranted for the goods and services being procured, the Division of Risk Management should be contacted.

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

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service	**Limits**
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	$1,925,000 per occurrence, $3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2008, as follows:

July 1, 2008 - $2,000,000. This complies with §8.01-581.15 of the *Code of Virginia*.

Insurance/Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/Architecture	$1,000,000 per occurrence, $1,000,000 aggregate
Legal	$1,000,000 per occurrence, $5,000,000 aggregate

Professional Engineer	$2,000,000 per occurrence, $6,000,000 aggregate
Surveying	$1,000,000 per occurrence, $1,000,000 aggregate

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

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

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

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

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

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

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

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

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

(i) DMBE-certified Small Businesses: 1%, capped at $500 per order.

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

The eVA transaction fee will be invoiced approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

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

AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

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

9.0 SPECIAL TERMS AND CONDITIONS

GOODS AND NONPROFESSIONAL SERVICES

1. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of institution) will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that (name of agency/institution) has purchased or uses any of its products or services, and the contractor shall not include (name of agency/institution) in any client list in advertising and promotional materials..

2. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

3. **AS BUILT DRAWINGS:** The contractor shall provide the Commonwealth a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the Commonwealth with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Commonwealth upon completion of the work and prior to final payment.

4. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

5. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions of Higher Education, other public bodies, Community Service Boards, Cities, Counties and other entities who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification. Entities may be authorized to use these contracts in accordance with the Code of Virginia.

7. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The award or awards will be made to the highest ranking offeror as applicable.

   7.1 **AWARD TO MULTIPLE OFFERORS:** 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 reserves the right to

make multiple awards as a result of this solicitation. 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. The Commonwealth also reserves the right to reject any or all proposals, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

I. **BEST VALUE AWARD(S):** Selection shall be made of two or more offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards may be made to a reasonably ranked DMBE-certified small business offeror that is other than the highest ranking offeror. Awards will be made on a best value basis to the Offeror(s) which, in its opinion, represents the best overall combination of quality, price, and various elements of required goods/services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The Commonwealth may cancel this solicitation 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, § 2.2-4359 D). The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

K. **AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S):** 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(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, the contract may be awarded to a reasonably ranked DMBE-certified small business offeror(s), that is other than the highest ranking offeror(s). 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.

8. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best And Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be re-scored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.

9. **PROPOSAL 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.

11. **PROPOSAL PRICES:** Proposal shall be in the form of a firm unit price for **each item** during the contract period.

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

14. **CERTIFICATION OF MEAT PRODUCTS:** By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

15. **CERTIFIED TEST REPORT:** Each bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Commonwealth reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

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

    Contractor Name:_____ Subcontractor Name:_____

    License # _____ Type _____

17. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for one hundred and twenty thousand dollars ($120,000) or more, or if the total value of all such contracts undertaken by offeror within any 12-month period is seven hundred and fifty thousand dollars ($750,000) or more, the offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars ($7,500) or more but less than one hundred and twenty thousand dollars ($120,000), or if the total value of all such contracts undertaken by offeror within any 12-month period is between one hundred and fifty thousand dollars ($150,000) and seven hundred and fifty thousand dollars ($750,000) or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars ($1,000) or more but less than seventy-five hundred dollars ($7,500), or if the contractor does less than $150,000 in business in a 12-month period, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The offeror shall place on the outside of the envelope containing the proposal and shall place in the proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

    Licensed Class A Virginia Contractor No. _____Specialty _____

Licensed Class B Virginia Contractor No. _____ Specialty _____

Licensed Class C Virginia Contractor No. _____Specialty _____

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

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

18. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

21. **DELIVERY NOTIFICATION:** The Agency shall be notified **within one hour of delivery** of all goods/equipment/services. Notification shall be made to : Logistics Chief, Emergency Operations Center (804.371.7245)

B. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

23. **EXTRA CHARGES NOT ALLOWED:** The proposal price shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

24. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

25. **FLAME RETARDANT CERTIFICATE:** Each offeror shall submit a certification in writing with their proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701 (latest version), large or small scale test.

26. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:_____ _____ _____

Name of Offeror Due Date Time

_____ _____

Street or Box Number RFP No.

_____ _____

City, State, Zip Code RFP Title

Name of Contract Officer: Peter Rigterink, VDEM Procurement Manager

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

27. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

28. **INSPECTION OF JOB SITE:** Contractor shall inspect the job site, prior to mobilization (if applicable) and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

29. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

30. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Commonwealth of Virginia, with limits of coverage of not less than $_____ for Loss Inside the Premises Coverage and not less than $_____ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured with respect to this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Commonwealth is remitted to the Commonwealth.

31. **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 offeror, by submitting his 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 offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

32. **LIMITATION OF LIABILITY:**

A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of $_____ or _____ times the amount of money paid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

33. **LIQUIDATED DAMAGES: (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.**

A. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES:** Delivery is required not later than ten days. It is understood and agreed by the offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of $100.00 per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin three calendar days after receipt of purchase order or contract and all work shall be completed in 15 calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of $100.00 per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be

granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

ASSESSMENT PROCEDURES:

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the contractor (see Chapter 10, Contract Administration); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default (see Chapter 10, Contract Administration).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

34. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

35. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the proposal 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 proposal as nonresponsive.

36. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a monthly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone

number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

C. Each prime contractor who wins an award valued over $200,000 shall deliver to the contracting agency or institution on a monthly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

41. **OPTIONAL PREPROPOSAL CONFERENCE:**

B. **OPTIONAL PRE-PROPOSAL CONFERENCE:** An optional pre-proposal conference will be held at the Trade Court Facility, 10501 Trade Court, Richmond, VA 23236, on January 13, 2011,at 10:00 a.m. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

42. **CORRECTIVE OR PREVENTIVE MAINTENANCE:** The contractor shall provide necessary corrective or preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

43. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: CPI. No price increases will be authorized for one year after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 120 days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 60 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 60 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 the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

44. **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.

47. **PRODUCT INFORMATION:** The offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

48. **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.

50. **REFERENCES:** Bidders shall provide a list of at least five references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	ORGANIZATION	ADDRESS	CONTACT PERSON	TELEPHONE
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

51. **RENEWAL OF CONTRACT:**

B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for three successive one year periods) under the terms and conditions of the original contract. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the various categories of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- **When Used: For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website http://stats.bls.gov/news.release/cpi.toc.htm or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at** www.dgs.state.va.us/dps**. Click on the**

"references" tab along the top of the screen and a link to their web site is listed under "Bureau of Labor Statistics."

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52. **SECURITY LICENSE:** In accordance with § 9.1-139 of the *Code of Virginia* (1950), the bidder/offeror shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work: installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. The bidder/offeror shall place their license number in the space provided below:

    Private Security Services Business License Number:_____

    For assistance, offerors may contact the Department of Criminal Justice Services at 804-786-4700.

53. **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.

55. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of one year following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or nonconformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

56. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit hose available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

57. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

58. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, the contractor shall furnish the agency with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the agency has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

59. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order."

a. For orders issued prior 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 and after, the Vendor Transaction Fee is:

(i) DMBE-certified Small Businesses: 1%, Capped at $500 per order.

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

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

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

Vendors desiring to provide goods and/or services to the Commonwealth shall participate

in the eVA Internet e-procurement solution and agree to comply with the following:

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

61. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

62) **CONTINUITY OF SERVICES:**

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

(i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

(ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and

(iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

63) **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the Contact Officer. The Agency may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

64) **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any 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 proposal a statement describing why the offeror is not required to be so authorized.

10. METHOD OF PAYMENT

Payment shall be made to the Contractor on a monthly basis. Invoices are to be submitted by the 10th of the monthly following the month goods/services were rendered.

12.0 ATTACHMENTS

ATTACHMENT A

OFFEROR'S VENDOR DATA SHEET

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. (In the case of a two-step IFB, it may cause the proposal portion to be determined to be not acceptable.)

1. Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Vendor's Primary Contact:

   Name: _____ Phone: _____

3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:

   _____ Years _____ Months

4. Vendor Information:

   eVA Vendor ID or DUNS Number: _____

5. Indicate below a listing of at least four (5) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

   A. Company:_____ Contact: _____

   Phone: (_____)_____ Fax: (_____)_____

   Project: _____

   Dates of Service: _____$ Value: _____

   B. Company_____ Contact: _____

Phone:(_____)_____ Fax: (_____)_____

Project:_____

Dates of Service:_____$ Value: _____

C. Company:_____ Contact: _____

Phone:(_____)_____Fax:(_____)_____

Project:_____

Dates of Service: _____$ Value: _____

D. Company:_____ Contact: _____

Phone:(_____)_____Fax:(_____)_____

Project:_____

Dates of Service: _____$ Value: _____

I certify the accuracy of this information.

Signed: _____Title: _____
Date: _____

ATTACHMENT B

SMALL BUSINESS SUBCONTRACTING PLA

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. Note: DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbe.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ Date: _____

Instructions

A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.

B. If you are not a DMBE-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in Section B.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

_____ Small Business

EMERGENCY SERVICES

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification number:_____ Certification Date:_____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses that have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address **DMBE Certificate #**	**Status if Small Business is also: Women (W), Minority (M)**	**Contact Person, Telephone & Email**	**Type of Goods and/or Services**	**Planned Involvement During Initial Period of the Contract**	**Planned Contract Dollars During Initial Period of the Contract**

Totals $					

ATTACHMENT C

PROPRIETARY/CONFIDENTIAL INFORMATION

ATTACHMENT D: PRICING SCHEDULE

(Note: Items listed ARE NOT meant to be an exclusive listing. Rather, the Offeror may list additional and/or alternative goods, equipment, and services for consideration)

Submitted To:

Commonwealth of Virginia
Department of Emergency Management
Peter Rigterink, VCO, CPPO, CPPB
10501 Trade Court
Richmond, Virginia 23236

RFP No. 127-11-0001
COV Emergency Services: Contract Negotiations

Thursday, March 31st, 2011, 5:00PM

ORIGINAL

Submitted By:

Byrd Brothers Emergency Services LLC
5164 Lamm Road
Wilson, North Carolina 27893
P: 252.293.4488
F: 252.293.4490
Toll-free: 1-866-932-0333
www.byrdbrothers.com

POC: Jamey Byrd
Email: jameybyrd@byrdbrothers.com

Providing 2nd Generation Solutions to a Young, Dynamic Industry.

The PREP Model™

Prepare | **R**espond | **E**xecute | **P**rocure

A Comprehensive Disaster Debris Management Solution

Byrd Brothers
EMERGENCY SERVICES, L.L.C.

Dear Mr. Rigterink,

Thank you and Mr. Sheppard for taking the time to meet with Karl and I to discuss Byrd Brothers' service offerings. Given our discussion, I firmly believe Byrd Brothers is ideally suited to perform disaster debris management services for the COV and its local jurisdictions.

For the sake of brevity, I will address each request directly as you asked for in the negotiations.

For additional clarification, each request is included in the Price Proposal as Line Item #24, 25 and 26.

1. At no additional cost, Byrd Brothers Emergency Services LLC will staff the VDEM Emergency Operations Center with a knowledgeable Company employee capable of making on-the-spot decisions. For additional clarification, Line Item #26 of the Price Proposal addresses the authorized representative on staff at the COV EOC.
2. Mobilization and demobilization of necessary resources to perform debris management services is already built in the Price Proposal offered by Byrd Brothers Emergency Services LLC. For additional clarification, Line Item #24 of the Price Proposal addresses mobilization/demobilization.
3. Locating, permitting and constructing each Debris Management Site is already built into the Price Proposal offered by Byrd Brothers Emergency Services LLC. For additional clarification, Line Item #25 addresses locating, permitting and constructing a Debris Management Site.

Given our conversations, I have sought to simplify the Price Proposal as much as possible.

Attached hereto, as Attachment A, is a revised Price Proposal for your review. By your design, local jurisdictions may utilize the VDEM contract. However, from my experience, each additional line item brings additional paperwork and, in turn, tracking that individual cost across the life of the project. This can be a very daunting task for a small, local jurisdiction recovering from a significant event. Thinking of the end-user, I sought to simplify the Price Proposal as much as possible.

To be fully transparent, I have made a few changes to the Price Proposal that I would like to clarify for you. Each line item was lowered *except* Line Item #10, 11b, 11c, 22 and 23. Additionally, I have significantly lowered Line Item #13, 14 and 15 and changed the quantities to reflect incoming cubic yards. Subsequently, this arrangement alleviates the documentation process associated with haul out tickets, reduces the amount of labor to monitor the haul out operations and allows the end-user to claim incoming yards as recycled material in accordance with Regulations for the Development of Solid Waste Management Plans (9-VAC 20-130-10 et seq.). Lastly, Attachment B provides Time and Material Prices for snow removal equipment and personnel.

On behalf of my brother and all the employees at Byrd Brothers, I thank you for the opportunity to present to and negotiate with the Commonwealth of Virginia. If I can provide any additional information or clarify outstanding issues, please do not hesitate to contact me or Karl Dix. We look forward to your favorable consideration.

With Warmest Regards,

James K. Byrd
Managing Member and CEO
Byrd Brothers Emergency Services, LLC

Attachment A: Revised Price Proposal

RFP No. 127-11-0001: COV Emergency Services Supplementary Price Proposal			
Item No.	*Description of Service*	*Unit*	*Bid Price*
1	**Emergency Debris Clearance Crew**	HOUR	$325.00
2*	**Load and Haul Vegetative Debris from ROW to a DMS**		
a	0-25 miles	CY	$7.19
b	25+ miles	CY	$7.50
3*	**Load and Haul Construction and Demolition Debris from ROW to a DMS**		
a	0-25 miles	CY	$7.39
b	25+ miles	CY	$7.70
4*	**Load and Haul Vegetative Debris from ROW directly to Approved Landfill**		
a	0-25 miles	CY	$7.50
b	25+ miles	CY	$7.90
5*	**Load and Haul Construction and Demolition Debris from ROW to Approved Landfill**		
a	0-25 miles	CY	$7.60
b	25+ miles	CY	$8.00
6*	**Load and Haul Vegetative Debris from ROE to a DMS**		
a	0-25 miles	CY	$7.19
b	25+ miles	CY	$7.50
7*	**Load and Haul Construction and Demolition Debris from ROE to a DMS**		
a	0-25 miles	CY	$7.39
b	25+ miles	CY	$7.50
8*	**Load and Haul Vegetative Debris from ROE directly to Approved Landfill**		
a	0-25 miles	CY	$7.50
b	25+ miles	CY	$7.90
9*	**Load and Haul Construction and Demolition Debris from ROE to Approved Landfill**		
a	0-25 miles	CY	$7.60
b	25+ miles	CY	$8.00
10*	**DMS Management**	CY	$1.50
11*	**Vegetative Debris Reduction**		
a	By Open Burn	CY	$1.25
b	By Air Curtain Incineration	CY	$1.65
c	By Grinding	CY	$1.75
12*	**Construction and Demolition Debris Mechanical Reduction**	CY	$2.50

13*	**Load and Haul Reduced Vegetative Debris (Mulch) to Final Disposal Site**		
a	0-50 miles	CY	$3.00
b	50+ miles	CY	$4.25
14*	**Load and Haul Burned Vegetative Debris (Ash) to Final Disposal Site**		
a	0-50 miles	CY	$3.25
b	50+ miles	CY	$4.50
15*	**Load and Haul Reduced Construction and Demolition Debris to Final Disposal Site**		
a	0-50 miles	CY	$3.25
b	50+ miles	CY	$4.50
16`	**Removal of Dangerous Hanging Limbs**	TREE	$90.00
17`	**Removal of Dangerous Split, Uprooted or Leaning Trees**		
a	Less Than 24"	TREE	$115.00
b	Greater Than 24" but Less Than 36"	TREE	$235.00
c	Greater Than 36"	TREE	$325.00
18	**Removal, Haul and Disposal of Hazardous Stumps**		
a	Greater Than 24" but Less Than 36"	TREE	$250.00
b	Greater Than 36" but Less Than 48"	TREE	$375.00
c	Greater Than 48"	TREE	$500.00
19	**Backfill for Hazardous Stump Removal**	CY	$18.00
20	**White Goods Removal, Freon Removal and Final Disposal**	EACH	$69.00
21	**E-Waste Removal and Final Disposal**	EACH	$55.00
22`	**Demolition of Structures and Placed on ROW**	SQ FT	$2.20
23	**Load, Haul, Screen Debris Laden Sand and Return/Reshape Clean Sand**	CY	$12.75
24	**Mobilization/Demobilization**	EACH	$0.00
25	**Locating, Permitting and Constructing a DMS**	EACH	$0.00
26	**Authorized Representative On Staff at the COV EOC**	HOUR	$0.00

Note: Byrd Brothers retains the capability and experience to remove other special debris. These prices can be negotiated as the need arises.

Legend: * denotes line items paid based on incoming CY
` denotes line items paid for services to place debris on ROW to be hauled at appropriate load and haul rate

Attachment B: Time & Materials

Daily Rate Fee Schedule: Equipment					
					KEY IN COST
Equipment	Specification	Capacity/Size	HP	Notes	Daily ($ per day)
Graders	moldboard size	8ft	to 50	incl. rigid and articulate eq.	$1,500.00
		10ft	to 100	incl. rigid and articulate eq.	$1,650.00
		12ft	to 150	incl. rigid and articulate eq.	$2,150.00
		14ft	to 225	incl. rigid and articulate eq.	$3,000.00
Loader, wheel	bucket cap	0.5cy	to 38		$1,000.00
		1cy	to 60		$1,350.00
		2cy	to 105		$1,450.00
		3cy	to 152		$1,625.00
		4cy	to 200		$2,750.00
		5cy	to 250		$3,250.00
		6cy	to 305		$3,750.00
		7cy	to 360		$4,500.00
		8cy	to 415		$5,000.00
		9cy	to 470		$8,000.00
		10cy	to 530		$10,000.00
Plow, grader mounted	width	to 10 ft			$1,000.00
		to 14 ft			$1,400.00
Plow, dump truck mounted	width	to 15 ft			$2,400.00
		to 15 ft		with leveling wing	$2,520.00
Truck, tractor			to 210		$1,200.00
			to 265		$1,400.00
			to 310		$1,600.00
			to 350		$1,800.00
Truck, water	tank cap	2500 gal	to 175	incl. pump and rear spray system	$1,100.00
		4000 gal	to 250	incl. pump and rear spray system	$2,150.00

Hourly Rate Fee Schedule: Personnel			
		KEY IN COST	
Personnel Needs Description	Unit	Hourly ($ Per Hr)	Daily ($ Per Day)
Project Coordinator	HR	$115.00	$920.00
Field Project Supervisor	HR	$80.00	$640.00
Foreman with Truck	HR	$55.00	$440.00
Equipment Operator	HR	$45.00	$360.00

Visit us at www.byrdbrothers.com.

Byrd Brothers
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