

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY**

PO Box 1199
RICHMOND, VA 23218-1199

Notice of Contract Renewal

CONTRACT # **E194-72879**

Contract Title: **Used Vehicles**

1	DATE:	July 15, 2016
2	CONTRACT PERIOD:	July 15, 2016 through July 14, 2017
3	SUPERCEDES:	n/a
4	AUTHORIZED USERS:	See Below
5	CONTRACTOR'S eVA VENDOR ID#:	VS0000079393
6	CONTRACTOR / VENDOR	Basic Auto Sales
7	CONTRACTOR CONTACT	Kory Hummer
8	TERMS	NET 30
9	DELIVERY	In-Stock Vehicles: 2 Days ARO Not In-Stock: 14 Days ARO
10	F.O.B.	Destination, Freight included up to 150 miles
11	CONTRACT PRICES	See Pricing Schedule
12	DPS CONTRACT OFFICER	Dennis Donahue Phone: (804) 786-5410 Email: dennis.donahue@dgs.virginia.gov

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

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

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1. CONTRACTOR / VENDOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address(es)	Contact Information (Name, Phone, Fax and Email)
Basic Auto Sales	VS0000079393	11371 Washington Highway Ashland, VA 23005	Name: Kory Hummer Phone: 804-305-7777 or 804-752-6658 Fax: 804-752-6934 Email: koryhummer@aol.com

2. GENERAL INSTRUCTIONS

1. Ordering Method: Unless otherwise instructed or exempted by DPS, all departments, institutions and agencies of the Commonwealth of Virginia using this contract must order items by issuing purchase orders through eVA. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor. If this contract is authorized for use by localities, Virginia cities, counties, town and political subdivisions, they should place all purchase orders through eVA or eVA Lite. See 4.13 for additional ordering information.
2. Purchase Order Information: When placing an eVA non-catalog order, each line of the requisition must be identified with the correct Contractor Name and Location (eVA Vendor ID#), contract item number, full item description and the unit price. The exact Contract Number, as shown on page 1, **must** be inserted in the "Contract Number" field for each line item of the eVA requisition. Purchase orders not bearing the correct contract number in the appropriate location will be non-compliant and may not be considered a purchase against this contract.
3. Ordering Entity Acceptance: Inspection and acceptance upon delivery and approval of vendor's invoice is the responsibility of the receiving entity.
4. Complaints: Any complaint that is due to a violation or breach of the Contract provisions, shall be reported on an official DPS "PROCUREMENT COMPLAINT FORM" (Form # DGS-41-024). To facilitate notification, this form shall be completed by the ordering entity and sent to the contract vendor, with a copy sent to DPS to the address shown on the form. Contract vendors shall also use this form to initiate complaints concerning entities. This form may be downloaded from the internet at www.eva.virginia.gov (Click on the Buyer tab, then on "Procurement Complaint Form").
5. Changes: Any changes whether for increases or decreases in pricing, delivery terms or additional options must be approved by the Division of Purchases and Supply in advance of issuance of the purchase order. Disputes between the ordering agency and the vendor will be resolved in accordance with the terms of the contract and any change orders/renewals unless prior approval was granted by DPS.
6. See Additional Information section below.

3. ADDITIONAL INFORMATION

1. **Prior to purchasing any motor vehicle**, all State Agencies must submit a completed OFMS Form 1 to the **DGS OFMS (Office of Fleet Management)** for their approval (*Code of Virginia 2.1-548.04*). The OFMS Form must be sent to the fax or email address listed on the form. Once you have a fully approved OFMS Form, purchase orders must be issued through eVA. Detailed Vehicle ordering instructions are available on the Vehicle Contracts webpage located under the State Contracts link from the www.eva.virginia.gov homepage, except that there is **NO vehicle ordering spreadsheet** used for this Used Vehicle Contract.
2. All Purchase Orders must clearly indicate the Quantity, Vehicle Year, Make, Model and Unit Price of each vehicle being ordered. Buyers must be sure that they have the printed Black Book value supplied by the Vendor, in their procurement file. It is the purchasing agencies responsibility to verify that the Black Book Value is correct and approve all invoices. (See 4.12 and 4.13)
3. Renewals: The initial term of this contract is 2 years (Initial term is July 15, 2013 through July 14, 2015). This contract has one (1) optional renewal period remaining.
4. This contract was bid by the vendor with the understanding that the dealer is not required to maintain an inventory of vehicles for this contract, however the vendor must comply with the delivery dates stated on page 1.
5. No other optional equipment or services can be ordered under this contract unless a formal contract change or one-time exemption request is approved by the DPS Contract Officer.

4. SCOPE OF WORK /SPECIFICATIONS

- 4.1 **General:** The specifications contained herein and in all other IFB attachments describe and define the minimum level of quality and performance of the requested products and services, and are meant to be met or exceeded. The Commonwealth reserves the right to solely evaluate all bids and to make all determinations.
- 4.2 The “Parties” are defined as the Department of General Services/Division of Purchases and Supply (DPS) and any Contractor awarded a contract pursuant to this solicitation. The term “Purchasing Agency” shall mean the Division of Purchases and Supply (DPS). The term “Ordering Agency” shall mean any authorized users of this contract who issues a purchase order for goods/services pursuant to the awarded contracts. **Ordering Agencies shall not request or negotiate any changes to the awarded contracts directly with the Contractors.**
- 4.3 **Qualified Vehicles:** Vehicles provided shall include any requested make and model of the only the types of vehicles specified below. *Unless authorized by the DPS Contract Officer and/or DGS-OFMS*, all used vehicles provided shall have trim packages and options comparable to the trim packages/options on the DPS contracts for new vehicles. The cost of a used vehicle cannot exceed the price of a comparable new vehicle available on a DPS contract. This contract does not cover any upfitting services or aftermarket 3rd party equipment installed on any used vehicle.
- a) Passenger Cars – All sizes; two and/or four door.
 - b) Vans – Mini, passenger and/or cargo.
 - c) Sport Utility Vehicles and Crossovers - all sizes; AWD, 2WD and/or 4WD.
 - d) Light Duty Trucks – All sizes; not to exceed one ton (Class 3).
- 4.4 **Minimum vehicle specifications are as follows;**
- a) Vehicle Age: The vehicle shall not be more than one (1) model year prior to the most current production model year.
 - b) Vehicle Odometer: The odometer reading shall not exceed 30,000 miles.
 - c) Vehicle Condition: Vehicle shall be in excellent mechanical, exterior and interior condition with no visible wear, no fluid leaks and is free of any damage. Vehicle shall require no reconditioning and shall have a clean engine compartment. Vehicle shall have no mechanical and/or cosmetic problems as deemed by the ordering agency. Vehicle must have a clean title and the ability to pass all Federal and State inspections. Fire, frame, or water damaged will not be accepted. Vehicles shall not have any record of having been stolen, salvaged or involved in any major accident or flood situation. Vehicles shall not have had any cumulative damage greater than \$750.00.
 - d) Vehicle to be furnished shall conform to all applicable Federal and Motor Vehicle Safety Standards and all equipment shall conform to Title 46.2, Chapter 10, of the Code of Virginia and shall include a valid State Inspection Sticker.
 - e) Engine: As specified by the Ordering Agency.
 - f) Transmission: Automatic unless otherwise indicated by the Ordering Agency.

- g) Air Conditioning: Shall be original manufacturer equipment installed.
- h) Steering: Power Steering
- i) Brakes: Standard for the vehicle make and model vehicle.
- j) Tires: Manufacturer's standard tires with a minimum of 6/32 tread depth remaining. Tires must not have been repaired or have existing side wall or tread damage. All primary tires and wheels shall be an identical matching set (i.e. no cross brands or models). Each vehicle shall be equipped with the manufacturer's standard tire repair kit, which may be a Tire Inflation Kit or a spare tire, jack and lug wrench. If a spare tire is the OEM standard, it may be mounted on a traditional steel wheel. All tires and wheels shall be properly mounted and balanced.
- k) Restraint system: A minimum of front driver and front passenger air bags required.
- l) License Plate Brackets: Vehicle shall be preconfigured for front and rear license plates or equipped with front and rear license plate brackets with no dealer logo.
- m) Keys: A minimum of two (2) complete sets of keys shall be furnished with each vehicle.
- n) Colors: Vehicles shall be available in any of the manufacturer's standard colors. The Ordering Agency will determine the color and/or color range required at the time of inquiry. The Contractor shall adhere to specific color choices indicated by the Ordering Agency. If any changes are necessary, the Contractor must obtain advance written approval from the Ordering Agency.
- o) Warranty: The vehicle shall be delivered with the remaining portion of the manufacturer's Bumper to Bumper and Powertrain Warranty. Also to include all standard manufacturer's vehicle warranty coverage such as the Safety Restraint System, Corrosion Coverage Warranty, Emissions Defect Warranty, and Emissions Performance Warranty.
- p) Emblems: The successful bidder shall not attach any dealer identifications or advertising sticker, emblem or decal anywhere upon the vehicle.
- q) Temporary License Plate: A DMV Temporary License Tag (30-Day tag) shall be furnished at no additional charge with each vehicle.
- r) Vehicle Publications, Forms and Documents: The successful bidder must furnish one (1) copy each of the following upon delivery with the vehicle:
 - All ownership documents and papers required by VA DMV for titling and registration purposes; DMV Transfer of Ownership, Dealer's Report of Sale, Bill of Sale, Odometer Statement (if applicable) and any other document required.
 - Vehicle Warranty Information Manual
 - Vehicle Owner's Manual
 - Certificate/Statement of Origin.
 - Emissions Certifications: Stating the vehicle meets U.S. Government Standards for sale in the Commonwealth of Virginia.

4.5 **CARFAX® Record**: The Contractor shall provide the ordering agency a CARFAX®, or DPS approved equivalent, vehicle history report prior to delivery of the vehicle unless otherwise specified by the Ordering Agency. Copy of service/maintenance history and evidence of any factory recall modifications completed shall be supplied for each vehicle. All factory recall modifications shall be completed prior to delivery. Any bidder or Contractor who requests to use a report other than CARFAX®, must provide a copy of the report with supporting information documenting the equivalence, for DPS approval. If at any time, a requested equivalent is not approved by DPS, a CARFAX® record must be provided.

- 4.6 **Delivery Lead Time:** Bidders shall provide a delivery lead times, after receipt of order (ARO), in the “Delivery” section 5.12 of this solicitation. The delivery lead times may be a factor in making the award.
- 4.7 **Delivery Locations and Times:** Vehicles shall be delivered to various state agencies, cities, counties, towns and political subdivisions throughout the State as required and indicated in their purchase order. Vehicles ordered by Virginia Department of General Services, Office of Fleet Management Services (OFMS) shall be delivered to: 2400 West Leigh Street, Richmond VA 23220. Normal hours for delivery shall be between the hours of 8:15AM and 4:00 PM, except on official state holidays and periods of shut down, unless otherwise instructed by the Ordering Agency. The Contractor shall clarify and coordinate deliveries with the Ordering Agency.
- 4.8 **Dealer Preparation:** Vehicles must be delivered clean and complete and ready for service including a current Virginia State Inspection. Vehicle pre-delivery service preparation and inspection must be performed by the dealer according to the manufacturer’s specifications at no extra cost. Each vehicle must be delivered with no less than a quarter (1/4) tank of gas. Vehicles delivered without proper dealer preparation must be picked up, serviced, and re-delivered by the dealer at no additional cost to the ordering agency.
- 4.9 **Pre-Delivery Inspection:** The Ordering Agency reserves the right to inspect service records, inspect and/or test drive the vehicle prior to acceptance of delivery and approval of vendor’s invoice.
- 4.10 **Delivery Inspection:** Each vehicle delivered will be checked for compliance with the specifications. If any deviations from the specifications, damage, or improper dealer preparation exist, the invoice will not be approved for payment until the vendor corrects all defects. The Vendor shall have 2 business days to correct any deficiencies unless approved otherwise by the Ordering Agency in writing.
- 4.11 **Taxes:** No Taxes are to be included in the Bid Response pricing, including Federal Excise and State Sales Tax. The ordering agencies as described herein shall furnish their Tax Exemption Registration number upon request.

4.12 Pricing:

- a) **Black Book Value:** The National Auto Research, Black Book® , Used Car & Light Truck Value/Price Point; Virginia Weekly Wholesale Clean Value with the applicable adjustments made for mileage and optional equipment will be used to determine the “**Black Book Value**” of the vehicle. The Contractor shall have and maintain an internet subscription to the above referenced Black Book edition at all times during the term of the contract. The Contractor must provide the Ordering Agency with a printout of the Black Book Value that shows the value posted on the date of the Ordering Agency’s inquiry to purchase the vehicle and must be a true representation of the vehicle requested. The Contractor shall provide the Ordering Agency with an updated Black Book value to show any adjustments made for actual mileage, etc. and the effective date of pricing for agency approval.
- b) **Differential:** The Differential shall be the bidder’s percentage bid that shall be added to or subtracted from the Black Book Value to determine the final contract Selling Price. The bidder must clearly indicate if their Differential bid is a plus/positive (+) or minus/negative (-) percentage. Failure to indicate if you bid is a plus/positive (+) or minus/negative (-) WILL result in a bid evaluation as your bid being a plus/positive percentage. The Differential bid shall include all goods and services provided, including all fees, preparation, inspection and delivery up to 150 miles plus any delivery to Richmond Virginia. Except for additional mileage rates for deliveries in excess of 150 miles, no extra charges will be permitted. The bidder shall indicate the Differentials bid in the Pricing Schedule for each quantity volume discount structure as requested. Failure to provide a Differential amount for each Price Level will result in your bid being deemed non-responsive.

- c) **Selling Price:** The Selling Price shall be determined by applying (adding/subtracting) the Differential bid to the Black Book Value. For example, if the Black Book Value is \$ \$18,500 and the Differential bid is - 3.0%, then the contract selling price will be \$17,945. The Contractor may sell vehicles for less than the pricing structure awarded; however, at no time shall vehicles be sold at higher costs.
- d) **Delivery Charges:** The vendor shall provide delivery for the product(s) purchased **in accordance with the following:**
 - i. **Included Miles = Distance equal to or less than 150 miles and all deliveries to a Richmond, Virginia address:** Vehicle(s) shall be delivered FOB Destination, **freight included.** No extra charges permitted. The included miles must be calculated in the differential bid.
 - ii. **Additional Mileage = Distance equal to or more than 151 miles:** The vendor may add an additional delivery charge of no more than \$0.60 per mile, per vehicle, of the difference between the actual total distance minus 150 included miles. (*Example: Actual total distance= 172 miles, minus 150 included miles, equals 22 miles applicable to an additional delivery charge per vehicle.*) The Bidder must indicate the Additional Mileage rate(s) for each price break/volume discount where specified in the Pricing Schedule. Additional Mileage rates shall not apply to any vehicle ordered by an entity with a Richmond Virginia address.
 - iii. **Distance:** Shall be calculated by the number of actual miles from the Contractor's physical address to the delivery point specified by the ordering entity. Mileage shall be determined using Yahoo (maps and directions) at <http://maps.yahoo.com>; with the results rounded up to the next whole mile.

4.13 **Ordering:** The Ordering Agency will provide a detailed description of the vehicle required (i.e. Year, Make, Model, Trim level, color and factory options). The Contractor shall provide the Ordering Agency a faxed or electronic copy of the Black Book Value showing the price and effective date of the pricing. If at any time the actual vehicle to be delivered is valued *less* than the original Black Book Value provided (due to differences in estimated vs. actual mileage or options) then Contractor must notify the Ordering Agency and provide an updated Black Book Value showing all adjustments and effective date. The Ordering Agency must approve any changes or adjustments. The Ordering Agency may request an updated Black Book value every week until a vehicle is delivered.

The parties agree that all orders issued under this contract by the Ordering Agency shall be processed through eVA, unless specifically exempted by DPS in writing. Orders against this contract which are not processed through eVA are not in compliance with the terms and conditions of this contract and Contractors receiving such non-eVA orders shall request the Ordering Agency to resubmit the order through eVA. If the contractor accepts an order under this contract, where the order has not been processed through eVA, the contractor will be in breach of contract. If an Ordering Agency issues an order which is not processed through eVA, but purports to be authorized by this contract, the Ordering Agency employees may be found in violation of Section 2.2-4376 of the *Code of Virginia*. Section 2.2-4376 prohibits public employees from knowingly making false statements or misrepresentations, and from using documents known to contain false statements or misrepresentations. The Contractor may only accept eVA Purchase Orders that are processed in accordance with the used vehicle ordering instructions that will be posted with the resulting contract.

4.14 **Dealer generated Order Confirmation:** Dealers awarded items against this contract are required to send the Ordering Agency an electronic/written confirmation of receipt of the purchase order to include confirmation of the options, color choices, etc. being placed. **eVA's automated email confirmation functionality may not be used to confirm orders.** This applies to all orders issued against this contract. This information must be completed within 2 business days after receipt of order. Confirmations should be emailed to the **"Ordering Person"** address shown on the purchase order and to the attention of the contact person listed. Each vehicle must be invoiced separately.

5. COMMODITY INFORMATION & PRICING

Qualified Vehicles: Vehicles provided shall include any requested make and model of the only the types of vehicles specified below. *Unless authorized by the DPS Contract Officer and/or DGS-OFMS*, all used vehicles provided shall have trim packages and options comparable to the trim packages/options on the DPS contracts for new vehicles. The cost of a used vehicle cannot exceed the price of a comparable new vehicle available on a DPS contract. This contract does not cover any up-fitting services or aftermarket 3rd party equipment installed on any used vehicle. State Agencies must have an approved OFMS Form 1 prior to ordering any vehicle.

- a) Passenger Cars – All sizes; two and/or four door.
- b) Vans – Mini, passenger and/or cargo.
- c) Sport Utility Vehicles and Crossovers - all sizes; AWD, 2WD and/or 4WD.
- d) Light Duty Trucks – All sizes; not to exceed one ton (Class 3).

This Pricing Schedule consists of five (5) levels of bid Differentials and one line for mileage over 151 miles. The intent of this pricing structure is to offer a reduction in costs (price breaks) if an order contains multiples of the **same** vehicle year, make and model. The vehicle colors and options may vary, however they must be the same year, make **and** model ordered at the same time to qualify for Level 2 through 5 pricing. All purchases that do not qualify for Level 2 through 5 pricing shall be subject to Level 1 pricing.

The Selling Price shall be determined by subtracting the Differential from the Black Book Value, Used Car & Truck Value/Price Point; Virginia Weekly Wholesale Clean Value. The Vendor must provide the purchasing agency with a printout of the Black Book Value and CARFAX report for the vehicle(s) being purchased. **See Section 4.12 for additional information.**

<u>Line #</u>	<u>Description</u>	<u>Price</u>
1	<u>Level 1 Pricing:</u> For all used vehicle purchases that do not qualify for Level 2, 3, 4 or 5 pricing.	Differential = <u>Minus (-) 1.50 %</u>
2	<u>Level 2 Pricing:</u> <u>4 to 10</u> vehicles of the same Year, Make and Model.	Differential = <u>Minus (-) 1.75 %</u>
3	<u>Level 3 Pricing:</u> <u>11 to 15</u> vehicles of the same Year, Make and Model.	Differential = <u>Minus (-) 2.00 %</u>
4	<u>Level 4 Pricing:</u> <u>16 to 25</u> vehicles of the same Year, Make and Model.	Differential = <u>Minus (-) 2.25 %</u>
5	<u>Level 5 Pricing:</u> <u>26 or more</u> vehicles of the same Year, Make and Model.	Differential = <u>Minus (-) 2.50 %</u>
6	<u>Additional Mileage Rate:</u> For deliveries of 151 miles and over. See section 4.12.d for additional information.	<u>\$ 0.60 per mile</u>

6. GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFB's: Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

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

J. PAYMENT (part 1 of 3): To Prime Contractor: a.) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations). b.) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. c.) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed. d.) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act. e.) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed.(Continued on part 2)

J. PAYMENT (part 2 of 3): In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363). 2. To Subcontractors: a.) A contractor awarded a contract under this solicitation is hereby obligated: (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. (continued on part 3)

J. PAYMENT (part 3 of 3): b.) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth. 3.) Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from

subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. PRECEDENCE OF TERMS: The following General Terms and Conditions VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. QUALIFICATIONS OF (BIDDERS/OFFERORS): The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

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

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

O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways: 1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract. 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods: a. By mutual agreement between the parties in writing; or b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

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

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

R. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/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 (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

S. TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/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 (part 1 of 3): By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. (continued in part 2)

T. INSURANCE (part 2 of 3): MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS: 1)Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. 2). Employer's Liability - \$100,000. 3) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy 4).Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.). (continued in part 3)

T. INSURANCE (part 3 of 3): NOTE: In addition, various Professional Liability/Errors and Omissions coverage 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.) \$1,750,000 per occurrence, \$3,000,000 aggregate, (Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2005 - \$1,800,000, July 1, 2006 - \$1,850,000, July 1, 2007 - \$1,925,000, 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 website (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, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

For orders issued prior to July 1, 2014 the vendor transaction fees can be found at www.eVA.virginia.gov.

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

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

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

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

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

7. SPECIAL TERMS AND CONDITIONS

Note: This is not a complete list of all ST&C's contained in the Contract, however all ST&C's an Authorized User should need to place a Purchase Order are displayed. Contact the Contract Officer if further information is necessary. The Special Terms and Conditions are numbered as they were in the solicitation.

- 5.1 Not displayed, see "Note" above.
- 5.2 Not displayed, see "Note" above.
- 5.3 **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 5.4 **AUTHORIZED DEALER:** By signing this bid, the Bidder certifies that it a dealer licensed by the Virginia Motor Vehicle Dealer Board to sell motor vehicles at the time of bid submission, unless the bidder can provide written determination from the Board that they are subject to an exemption.
- 5.5 Not displayed, see "Note" above.
- 5.6 **BID PRICES:** Bids shall be in the form of a firm percentage "differential" from the Black Book Price version specified which will remain firm throughout the term of the contract and any renewals executed. Bids for the additional mileage shall be in the form of a firm fixed price per the terms of the solicitation
- 5.7 Not displayed, see "Note" above.
- 5.8 Not displayed, see "Note" above.
- 5.9 **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- 5.10 **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By submission of a response to this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.
- 5.11 **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- 5.12 **DELIVERY:** The Bidder shall indicate the number of calendar days for delivery after receipt of order (ARO) below. The Agency requires the bidder/Contractor to delivery within a reasonable time ARO. If the bidder/Contractor does not insert a stated delivery time in the blank(s) below, the bidder will be deemed to offer delivery in accordance with the Agency's desired delivery time as stated below. This date may be a factor in making the award.

Agency's desired Delivery Dates:

- In-stock vehicles (on the Contractor's lot): 2 calendar days ARO.
- Vehicles not in-stock: 14 calendar days ARO.

BIDDER's STATED DELIVERY TIME:

- In-stock vehicles (on the Contractor's lot): _____ calendar days ARO.
- Vehicles not in-stock: _____ calendar days ARO.

- 5.13 EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete delivery ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.
- 5.14 PROMPT PAYMENT DISCOUNTS: Agency will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment should be included in your bid where indicated. Discounts will not be calculated in determining net low bid.
- 5.15 SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
- 5.16 FINAL INSPECTION: The Contractor shall demonstrate to the authorized owners representative that the equipment delivered is fully operational and in compliance with the contract specifications. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance.
- 5.17 MAINTENANCE MANUALS: The contractor shall provide with each piece of equipment a standard Owner's operation and maintenance manual and a copy of all existing warranties.
- 5.18 ERRORS IN BIDS: Errors in bids will be handled in accordance with section 5.13 of the *Vendors Manual*.
- 5.19 SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:
- A. It is the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders are required to submit a Small Business Subcontracting Plan. Unless the bidder is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Virginia Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a yearly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by

the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

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

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

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
- (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

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

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov, 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.

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

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

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

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

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

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

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

- 5.21 **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after issuance of a Purchase Order against the contract is strictly prohibited unless approved in advance in writing by the Contract Officer or Ordering Agency. The Ordering 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.
- 5.22 Not displayed, see “Note” above.
- 5.23 **QUANTITIES:** Quantities set forth in this solicitation are **estimates only**, no quantity or dollar volume of business shall be guaranteed. The contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- 5.24 Not displayed, see “Note” above.
- 5.25 Not displayed, see “Note” above.
- 5.26 **RENEWAL OF CONTRACT:** The initial term of this contract will be for two (2) years from the date of award (**July 15, 2013 to July 15, 2015**). The contract may be renewed by the Commonwealth upon written agreement of both parties for up to three (3) successive one-year periods under the terms and conditions of the current contract, and at a reasonable time (approximately 60 days) prior to the expiration date. Renewals of this contract are at the sole discretion of the Commonwealth.
- 5.27 **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided in Exhibit 2. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth’s use and acceptance of such form, or its acceptance of Contractor’s statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

- 5.28 **SUBCONTRACTS:** In the event that the Contractor desires to subcontract some part of its obligation hereunder, the Contractor shall furnish the Commonwealth with the names, qualifications and experience of their proposed Subcontractors. No portion of the contract shall be subcontracted without prior written consent of the Commonwealth. The Contractor shall remain fully liable and responsible for its Subcontractor(s) and shall assure compliance with all requirements of the contract. The bidder must include all planned subcontractors with their bid.
- 5.29 **WARRANTY (COMMERCIAL):** The contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the manufacturer and contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth *by any other clause of this solicitation.* Copies of these warranties shall be furnished with the bid. Specifications that state a warranty greater than the most favorable commercial warranty, will convey.
- 5.30 **PRICE ESCALATION/DE-ESCALATION:** The Differential percentage shall remain firm for the entire contract period, including any renewals. Adjustments may be permitted for changes in the contractor's cost of providing goods and services for the Additional Mileage Rate only, however at no time shall this mileage exceed \$ 0.60 per mile. The **CONSUMER PRICE INDEX (CPI) INDEX/INDICES: CWUR0000SAG – Other Goods and Services**, and other relevant market conditions as determined appropriate and approved by DPS, will be **used by DPS** as guides to evaluate requested price changes. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, “across the board” price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

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

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increases which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

- 5.32 **PURCHASE VOLUME REPORTS:** The Contractor shall furnish the Division of Purchases and Supply (DPS) a statement covering the total dollar volume of purchases made under this contract and a report of the total number of each contract item delivered under this contract on an annual basis and approximately 90 days prior to the contract expiration. See Section 6.0 for additional information.
- 5.33 **CONTINUITY OF SERVICES:**
- a) The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
 - (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

- (ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
- (iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

- b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
- c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

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