



COMMONWEALTH of VIRGINIA

DGS CENTRAL PROCUREMENT UNIT (CPU)
215 GOVERNOR STREET • RICHMOND, VIRGINIA 23219-2010

REQUEST FOR PROPOSAL (RFP) #NCH-2008-1208

Online Surplus Property System
Commodity Codes: 99800 – Surplus Property • 96209 – Auctioneering Services

Issue Date: 12/08/08 • Due Date/Time: 01/14/09 – 2:00 P.M. EST

Procurement Officer: *Nezette C. Howard, VCO • Phone: (804) 786-8768 • E-mail Address:*
Nezette.howard@dgs.virginia.gov

USER: Department of General Services, State Surplus Property located in Richmond and Wytheville, Virginia. Other Commonwealth Agencies, Institutions and other public bodies (collectively “Authorized Users”) as defined in §2.2-4301 of the Code of Virginia may also be added as needed as additional users at a later date.

OPTIONAL PRE-PROPOSAL CONFERENCE: An optional pre-proposal conference will be held at **9:30 a.m. on Thursday December 18, 2008** at DGS/Central Procurement Unit (CPU), 215 Governor Street, Richmond, Virginia 23219-2010. A toll free number will be provided for those who are unable to attend. Please **See Section IX,H** for additional information related to this optional pre-proposal conference. If special ADA accommodations are needed, please contact Nezette Howard at (804) 786-8768.

CLARIFICATION OF TERMS: If any prospective offeror has questions about specifications or other solicitation documents, then the prospective offeror should contact the Procurement Officer whose name appears on the face of this solicitation no later than five (5) working days before the due date. Any revisions to the solicitation will be made only by an addendum issued by the Procurement Officer named above.

PERIOD OF CONTRACT: Initial Two (2) year term contract beginning at time of award with four (4) additional one (1) year renewal options.

COMPANY NAME: _____	DATE: _____
ADDRESS: _____	BY: _____
	Signature in ink
_____	NAME: _____
	(Print)
_____	TITLE: _____
CITY/STATE/ZIP: _____	PHONE NO: _____
FEIN OR SOCIAL SEC. NO: _____	FAX NO: _____
COMPANY WEBSITE: _____	E-MAIL ADDRESS _____
eVA Business-to-Government Registered Vendor partner with Commonwealth of VA?	YES ____ NO ____
Executed Trading Partner Agreement?	YES ____ NO ____
This information below is requested for informational purposes only:	
Corporation _____	Partnership _____
Proprietorship _____	Individual _____
Woman Owned _____	
Small Business Owned _____	Minority Owned _____

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

AWARD POSTING: Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, the Commonwealth of Virginia, through the Virginia Department of General Services, Central Procurement Unit (CPU), will publicly post such notice online at <http://www.eva.virginia.gov> for a minimum of ten (10) days.

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I. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish, through competitive negotiations, a contract with one (1) or more qualified vendors who can provide services to conduct internet sales of surplus property, at the direction of the Department of General Services' (DGS) State Surplus Property (SSP). These items may be located at various sites throughout the Commonwealth of Virginia.

II. BACKGROUND

DGS is interested in contracted internet auction services to augment its physical warehouse sales. DGS seeks to:

- Minimize the considerable work associated with these sales.
- Minimize transportation costs associated with shipping property to the surplus warehouses.
- Explore opportunities that will increase sales' revenues by reducing depreciation and holding costs and by increasing opportunities.

DGS SSP anticipates listing property from, but not limited to, state agencies and institutions located throughout the Commonwealth of Virginia. The property consists of many different product classes; examples are computers, furniture, jewelry and equipment and other personal property, as defined in sec 2.2-1124 any other property owned by Agencies. Please note that this does not include real property.

DGS is seeking proposals from qualified firms to host the internet auctions. Designated state employees will post items to the website(s) and will collect monies upon final sale. DGS anticipates entering into a contract with one (1) or more vendors depending upon the capabilities and benefits described in the offerors' proposal for an initial one (2) year term contract with four (4) additional successive one (1) year renewal options.

A. Definitions:

1. Offeror- Vendor submitting the proposal
2. Bidder- Customer bidding on property of the Commonwealth of Virginia

III. STATEMENT OF NEEDS

DGS requires reliable, responsive and cost-competitive internet sales services. Specifically, DGS is seeking the advantages of a full service professional, private sector auction and sales marketing firm(s) to provide services consistent with the following:

A. General Requirements:

1. In this concept, DGS State Surplus Property (SSP) will determine the item(s) of equipment to be surplus and will post the item(s) to the contractor(s) website.
2. Market the products offered for sale by the Commonwealth in a manner that will maximize revenue potential for the sale of the item.
3. A contractor's cost for the operational activities stated above would be the contractor(s) responsibility and come from the agreed commission. There shall be a single commission rate paid only upon successful payment and there are to be no other fees attached.
4. Ideally, the contractor(s) will provide DGS with a real-time, on-line data source to provide current and previous auction, statistical, and inventory reporting capabilities in which specific agency information may be obtained.
5. Assure that defaulted bidders do not bid on future property of the Commonwealth.
6. Assure that award documents are provided to bidders and send them an official notification that they will receive further information regarding payment and pick up of property.
7. Assure that bidders understand they have only five (5) days to pay from time of award and five (5) days to pick up property. If this is not done they will be in default according to the Commonwealth's discretion.
8. Assure that bidders are educated on all requirements.

B. Specific Requirements:

1. The system should be a tiered solution where property can be offered to a selected group such as Agencies, Political Subdivisions, and eligible non-profit organizations as defined by State Surplus in accordance with section 2.2.1124 and hereby defined as "Tier 1" prior to being offered for sale to the public, hereby referred to as "Tier 2." It is contemplated that any sale to these Tier 1 groups would result in zero revenue to DGS, and thus the provider would not receive a commission on these sales.
2. The system should have the ability to automatically convert listings to the Tier 2 group if no sale results from the Tier 1 group.

3. DGS desires functionality to create internet sales that can be set either for fixed completion times, or possibly extended times based on bidding activity. An example of extended live online auction bidding format is where the bidding period is extended by 15-second auction extension periods allowing auctions to continue until all bids received are completed. An example of this type of extending auction format can be viewed at <http://www.bidz.com>.
4. The system should offer the ability of tiered bidder's premium to the posting. Explain how this will work after award.
5. Explain how your system will assure defaulted bidders will not bid on future property owned by the Commonwealth.
6. Detail your customer service plan. How will it address emergencies and system shutdowns? What are the hours of availability? What is the service time?
7. Describe your approach to demographics. How will you market special property?
8. The Commonwealth of Virginia requires all sales records to be held for a minimum of 5 years for auditing purposes. Describe how this will be done. Will it accommodate photos and, ".jpeg," ".tiff," or other photo file formats?
9. It should be expected that any Offeror receiving the contract will be able to incorporate the VA State Surplus Online Sales Terms and Conditions with any online sales transaction anticipated, as outline in attachment D.

Comment [n1]: Bob, we can get together on #3 and 4 of this to explain better if needed.

Comment [RG2]: We'll have to wait on Brad for this one – I have tried to explain one tyoe of system used at <http://www.bidz.com>

IV. PROPOSAL REQUIREMENTS

A. GENERAL PROPOSAL REQUIREMENTS AND SUBMISSION INSTRUCTIONS

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) printed original, five (5) printed copies, and one (1) unprotected electronic copy (CD or DVD) of each proposal must be submitted to the issuing agency. No other distribution of the proposal shall be made by the offeror. The Offeror shall make no other distribution of the proposal. Proposals will not be accepted by facsimile transmission or by electronic mail. Any proposals received after the deadline will not be considered. It is the Offeror's responsibility to assure that proposal packages are received by the time and date indicated. Proposals submitted elsewhere, including to other state or federal agencies, will not be accepted. Refer to the first page of this document for the deadline and for the address.
2. Proposal Preparation:

- a) Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b) Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c) Proposals should be organized in the order in which each requirement is presented in the RFP. Tabs are suggested. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one (1) page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d) Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

Proposal format requirements also include:

- The entire proposal shall be limited to 75 typed pages (excluding résumés and Attachments)
 - 8½ x 11 inch page size (larger pages are allowed for figures or tables, but they must be folded into the overall proposal and used sparingly)
 - No font smaller than 12 point
- e) Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the Commonwealth and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information

submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of § 2.2-4342, D of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. 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.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to present an oral presentation of their proposal to DGS. 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 agency will schedule the time and location of these presentations. The Offeror will be requested to demonstrate their application, set-up, and product utilizing sample data from DGS. DGS may request that if offerors give an oral presentation that they send six (6) copies on a CD or DVD of the presentation beforehand.

Oral presentations are an option of DGS and may or may not be conducted.

B. SPECIFIC PREPARATION

Proposals should be as thorough and detailed as possible so that DGS may evaluate the Offerors capabilities to provide the required services. Offerors are required to submit the following items separated by tabs within the proposal and in sequential order corresponding to the related sections of this RFP :

- TAB 1: The return of the RFP cover sheet, and all addenda acknowledgments, if any, signed and filled out, as requested. Completed Vendor Data Sheet (Attachment B) and other specific items or data requested in the RFP. Completed eVA registration documentation.
- TAB 2: Qualifications and experience: Describe your firm's background, experience, and qualifications as it relates to this type of project, particularly with Federal, State, and local government entities, which should include but not be limited to the following:

- a) Describe your firm's background, company history, locations, including the principals and their background. Please detail the ownership structure and other relevant information regarding the firm.
- b) Name, qualifications, and resumes of personnel to be assigned in the implementation of this contract. Provide names of potential subcontractors.
- c) Please make any disclosures about any pending legal proceedings or business litigation against your firm, any officer, or principal. If necessary, please provide an explanation and indicate the current status or disposition (not to exceed two (2) pages).
- d) History of sales to Federal, State, and local government entities. Breakdown number of sales, average dollars of sales and total sales amounts. List products types and other sales statistics.
- e) Include at least four (4) references of similar quality services. Please use form provided on Attachment B.

TAB 3: Approach to services: Describe your firm's approach to provide a reliable, responsive and cost-competitive internet sales service. Outline how your firm will provide a full service professional, private sector auction and sales marketing service as detailed in Section III, Statement of Needs above.

TAB 4: Cost: Commission shall include all fees. One (1) set commission price shall be submitted and considered. Negotiations of fees take precedence.

TAB 5: Describe the level of insurance coverage or professional liability insurance your firm carries. Please provide financial information to demonstrate the financial stability of your firm. If you are a public company, please provide a current audited annual report. If you are a private company, please provide a letter from your financial institution on their letterhead, stating the financial stability or credit level of your firm (not to exceed five pages).

TAB 6: Appendices, Data and Other Submissions:

Include any appendices, data and other submissions necessary to support your proposal.

TAB 7: The Offeror must submit the following three sets of data for small business, women-owned business, and minority-owned business: 1) ownership, 2) utilization of small, women-owned and minority-owned businesses for the most recent 12 months, and 3) planned involvement of small businesses, women-owned businesses and minority-owned businesses on the current procurement.

C. PROPRIETARY INFORMATION

All executables, user data, materials, meeting minutes, progress reports and documentation shall be submitted to the DGS and shall belong exclusively to DGS, and shall 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* provided the Offeror invokes the protections of Section 2.2-4342F of the *Virginia Public Procurement Act* which provides that:

“Trade secrets or proprietary information submitted by an Offeror, or subsequently the Contractor, in connection with a procurement transaction, shall not be subject to public disclosure under the *Virginia Freedom of Information Act*. However, the Offeror or Contractor must invoke the protection of this Section prior to, or upon submission of the data or other materials. The Contractor must identify the data or other materials to be protected and justify in writing the explicit reasons that such protection is necessary. Failure to mark the data or other materials as proprietary or otherwise classified, will result in the data or other materials being released to Offerors or to the public as provided in the *Virginia Freedom of Information Act*.”

The classification of the entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.

D. ORAL PRESENTATION

Offerors who submit proposals in response to this RFP may be required to present an oral presentation of their proposal to the Proposal Evaluation Team. An oral presentation may provide an opportunity for the Offeror to clarify or elaborate on their proposal submittal. If held, DGS will schedule the time and location of these presentations. Oral presentations are an option of the Proposal Evaluation Team and may or may not, be conducted. Therefore, proposals must be complete.

E. OFFEROR’S UNDERSTANDING OF REQUIREMENTS

Offerors are responsible to inquire about and clarify any requirement of this RFP that is not understood. **NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.** All inquiries related to this RFP must be submitted in writing to Mrs. Nezette C. Howard, CPPB, VCO via e-mail at Nezette.howard@dgs.virignia.gov or fax at 804-786-1593. Please include “RFP #NCH-2008-1208” in the title of the message or fax cover page.

All written inquiries must be received by the issuing office the time and date given out in the pre-proposal conference. **NO FURTHER WRITTEN INQUIRIES WILL BE ACCEPTED AFTER CLOSE OF BUSINESS ON THAT DAY.** Any change in this

solicitation will be made through an addendum that will be posted on the state procurement website at www.eva.virginia.gov.

F. COST OF PROPOSLS

The Offeror is responsible for all costs of proposal preparation. The Commonwealth of Virginia is not liable for any costs incurred in response to the RFP.

G. UTILIZATION OF PLANNED INVOLVEMENT OF SWAM BUSINESSES

All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses and minority-owned (SWAM) businesses must be submitted. If an Offeror fails to submit all information requested, the DGS may require prompt submission of missing information after the receipt of Contractor's proposals. See section 1.B.Tab 7 for clarifications on what to submit.

V. EVALUATION AND AWARD CRITERIA

A. Evaluation Criteria

The Proposal Evaluation Team will review all proposals received by the proposal submission deadline. Proposals must be complete and responsive to all sections of the RFP. Proposals that do not fulfill all program requirements or omit any of the requested contents may receive a reduced evaluation. Weights for these criteria will be posted not later than the date/time set for receipt of proposals. Factors upon which proposals will be evaluated include:

Evaluation Criteria	Point Value
1. Qualifications and experience of offerors in providing similar services and goods.	
2. Demonstrated ability and prospective capability to provide services that meet Statement of Needs, including reutilization of property by Public Bodies	
3. Cost	
4. Participation of Small, Women-owned and Minority-owned (SWAM) Businesses	20
TOTAL	100

B. Award Criteria

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 RFP, including price. 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. DGS reserves the right to make multiple awards as a result of this solicitation.

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

VI. REPORTING AND DELIVERY INSTRUCTIONS

- A. Reporting and delivery requirements shall include all items specified in Section III, Statement of Needs, of this RFP.
- B. Utilization of Small Businesses and Business Owned by Women and Minorities.

During the term of any agreement resulting from this solicitation, or any renewal thereof, the Offeror agrees that the following reports shall be submitted to the purchasing agency:

Periodic Progress Reports/Invoices (Monthly): Contractor will include a report on involvement of small businesses and businesses owned by women and minorities to the Contract Monitor, Department of General Services, Procurement Unit, 215 Governor Street, Richmond, Virginia 23219; Attention: Director of Procurement Services. This report should be submitted in electronic spreadsheet format via email to procurement@dgs.virginia.gov no later than the 5th of each month. This report will specify actual dollars expended year to date with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses, as delineated herein under the section entitled "Small Business Subcontracting and Evidence of Compliance."

VII. OPTIONAL PRE-PROPOSAL CONFERENCE

An optional pre-proposal conference will be held on Thursday **December 18, 2008. at the** Department of General Services, Procurement Services Unit, located at 215 Governor Street Richmond, Virginia 23219. 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.

Potential Offerors are requested to submit any questions pertaining to this RFP in **writing** prior to the date and time of the pre-proposal conference. All questions should be submitted to Mrs. Nezette C. Howard, VCO via email at Nezette.howard@dgs.virginia.gov, fax (804-786-1593) or United States Postal Service at DGS/Procurement Services Unit, 215 Governor Street, Richmond, Virginia 23219-2010.

Due to the importance of all Offerors having a clear understanding of the scope of work and requirements of this solicitation, attendance at this conference is highly encouraged. Attendance at the conference will be evidenced by the representative's signature on the attendance roster.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

VIII. GENERAL TERMS AND CONDITIONS

The following terms and conditions are **MANDATORY** and shall be included verbatim in any Contract awarded:

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their 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: 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 (bidder/offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT**:

1. To Prime Contractor:

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

invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
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. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following

insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

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

S. **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.

T. **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.

- U. **NONDISCRIMINATION OF CONTRACTORS:** A offeror 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 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.
- V. **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 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.

W. **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.

X. **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. DMBE-certified women- and minority-owned businesses are also considered small businesses when they have received DMBE small business certification. Small businesses must be certified by DMBE not later than the solicitation due date.

Z. **MODIFICATIONS:** This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

AA. **NON-APPROPRIATION:** All funds for payment of software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

IX. SPECIAL TERMS AND CONDITIONS

The following terms and conditions are desirable. The Contractor may propose alternative language, but the basic form of the Agreement shall be retained. Contractors are requested to limit their proposed changes, if any, to those of a substantive nature.

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment or services resulting from this proposal, no indication of such sale or service to the Commonwealth will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth has purchased or uses any of its products or services, and the contractor shall not include the Commonwealth in any client list in advertising and promotional materials.
- B. **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.
- C. **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 RFP, including price, if so stated in the RFP. 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 RFP 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.

D. BREACH

Contractor shall be deemed in breach of this agreement if the Contractor: (a) fails to provide any service by the specified delivery date; (b) repeatedly fails to respond to requests for required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth)

following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Services. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

- E. **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.
- F. **DELIVERY NOTIFICATION:** The using Divisions/Units Representatives shall be notified 48 hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Representative's name(s) and contact information will be furnished at time of award.
- G. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____

_____	_____	_____
Name of Offeror	Due Date	Time
_____	NCH-2008-1208	
Street or Box Number	RFP No.	
_____	Online Surplus Property Sales	
City, State, Zip Code	RFP Title	

Name of Procurement Officer: Nezette C. Howard, VCO

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 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.

- H. **PRE-PROPOSAL CONFERENCE - OPTIONAL:** An optional pre-proposal conference will be held on Thursday, December 18, 2008 @9:30AM, at the Department of General Services, Central Procurement Unit, located at 215 Governor Street Richmond, Virginia 23219. 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.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

- I. **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.
- J. **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.
- K. **REFERENCES:** Offerors shall provide a list of at least four (4) 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. See Attachment B to complete document.

L. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

It is the goal of the Commonwealth that 40% of its purchases be made from DMBE-certified 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.

In instances where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor will assist the subcontractor in completing the DMBE online certification application <http://www.dmbv.virginia.gov/> to become either a DMBE certified Small Business, Women-owned Business or a Minority-owned Business.

Contractor agrees to report the use of any small business subcontractors on a monthly basis by providing the purchasing office with a minimum of the following information electronically by email in spreadsheet format about the DMBE-certified Small business, as follows: name of small business, phone number, DMBE-certification number, DMBE category type*, taxpayer identification number (T.I.N.), type of product/service provided, and total dollar amount subcontracted for the reporting period. A suggested format follows:

Firm Name & Phone Number	DMBE Number	Cert.	DMBE Category *	T.I.N.	Type Goods/ Services	Amount (\$)
_____	_____	_____	_____	____-____	_____	_____
_____	_____	_____	_____	____-____	_____	_____
TOTAL						_____

* Small (S), Woman-owned (W), Minority-owned (M) Business Certification.

Reports are to be emailed by the 5th of each month to: procurement@dgs.virginia.gov.

M. REPORTING AND DELIVERY INSTRUCTIONS

Utilization of Small Businesses and Business Owned by Women and Minorities:

The following reports shall be submitted to the purchasing agency:

Periodic Progress Reports/Invoices (Monthly): Contractor will include a report on involvement of small businesses and businesses owned by women and minorities to the Contract Monitor, Department of General Services, Procurement Unit, 215 Governor Street, Richmond, Virginia 23219; Attention: Director of Procurement Services. This report should be submitted in electronic spreadsheet format via email to procurement@dgs.virginia.gov no later than the 5th of each month. This report will specify actual dollars expended year to date with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses, as delineated herein under the section entitled "Small Business Subcontracting and Evidence of Compliance."

N. NON-APPROPRIATION

All funds for payment services ordered under this Contract are subject to the availability and legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

- O. **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.
- P. **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.

Q. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in multiple purchase orders 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 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.

R. **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 those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the proposal.

S. **CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S:** Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth

location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

- T. **TERM:** This Agreement shall take effect on the date of its final execution by both parties, and continue in full force for a period of two (2) years, the "Initial Period". The Agreement may be renewed following the Initial Period in accordance with the terms delineated herein under the section entitled Renewal of Contract.
- U. **RENEWAL OF CONTRACT:** This Contract may be renewed at the sole discretion of the Commonwealth and upon written agreement of both parties for and additional four (4) successive one (1) year periods, under the terms of the current 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 ninety (90) days prior to the expiration date of the then current term.

If the Commonwealth elects to exercise the option to renew the contract, then 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 "Other Services" category of the CPI-W section of the Consumer Price Index of the United States' Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available.

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

Upon request of the Department of General Services, the Offeror shall provide any type of information the Agency deems relevant to the Offeror's integrity or responsibility.

Upon award of the Contract, the above mentioned Term and Condition shall apply to the Contractor.

W. AUTHORIZED REPRESENTATIVES

This Contract may be modified in accordance with Section 2.2-4309 of the Code of Virginia. The only representatives, or their duly authorized agents, authorized to modify this Agreement on behalf of the Commonwealth and the Contractor are shown below.

CONTRACTOR

COMMONWEALTH OF VIRGINIA

Department of General Services
ATTN: Director, Procurement Services
215 Governor Street
Richmond, VA 23219-2010

X. METHOD OF PAYMENT

The Contractor shall be paid based on receipt of an invoice that list the services provided and the date the services were performed. Based on receipt of a valid invoice, payment shall be processed using the state's charge card, which is MasterCard **or** by state check. Payment shall be made within 30 days of receipt of a valid invoice for services.

If the invoice is in dispute, the Owner will notify the Contractor of the disputed amounts in writing and process payment on undisputed amounts. Based on award of the contract, the contractor shall be provided in writing the contact for invoices and services rendered.

Invoices shall be mailed to: Department of General Services, Attn: Fiscal Services, Post Office Box 404, Richmond, VA 23218-0404.

Y. TECHNOLOGY IMPROVEMENTS

The Commonwealth recognizes the rapid pace of development in new technology with the need to refresh equipment, software, or services to accommodate technological change. It is the Commonwealth's intent to actively seek solutions that allow it to retain its investments in current hardware, software or services, while gaining access to the latest developments in technology in the most cost effective manner. In so doing, the Commonwealth seeks to provide its customers and Contract users with access to services that are representative of the most recent, innovative, and/or proven technologies available.

Therefore, Contractor agrees to provide DGS with written notification of any known hardware, services, firmware, or software changes at least 60 days, or sooner if agreed to by DGS in writing, in advance of any proposed date for implementing such changes that may affect the features, functionality, or method of operation or delivery of any Service or

Product offered under this Agreement. Such changes shall take place only after review by DGS, and upon the written mutual agreement of both parties. Upon DGS' request, the Contractor shall promptly provide all documentation needed to evaluate the impact of such changes.

Z. SCOPE OF AGREEMENT

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and _____ (the "Contractor"), a _____ corporation having its principal place of business at _____ for the establishment of an Application Service Provider (ASP) to provide K-12 educational software, licensing, and support to educational institutions throughout the Commonwealth, hereinafter referred to as "Authorized Users," through a website-based subscription service (the "Service" or "Services") at discounted pricing pursuant to the Commonwealth's Request For Proposal #NCH-2008-1208, dated _____ (the "RFP") and the Contractor's proposal, dated _____, 2009 in response thereto..

AA. INTERPRETATION OF AGREEMENT

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal if any, if submitted in response to a Request For Proposal ("RFP"); and (4) the Commonwealth's RFP, if any. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

X. PRICING SCHEDULE:

The pricing provided in this pricing schedule is for scoring purposes and should reflect the services you have proposed to provide to DGS under this solicitation. The pricing schedule shown is the offeror's pre-negotiated commission and all associated fees for services described in Section III, Statement of Needs. These will be the final rates for negotiation for successful offeror(s) to use to determine their offer if selected for such negotiations. See below.

Category:	Percentage Rate:
Offeror's Sales Commission (to include all fees associated with sales transaction)	

XI. ATTACHMENTS

Attachment A – Agreement

Attachment B – Vendor Data Sheet

Attachment C – Small Business Subcontracting Plan

Attachment D – Virginia State Surplus Property Online Sales – Terms and Conditions

ATTACHMENT A
TO
AGREEMENT DGS – _____ – ____
FOR THE VIRGINIA DEPARTMENT OF GENERAL SERVICES _____

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA _____ – ____ between XYZ and the Commonwealth of Virginia.

OFFERORS – THIS IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. DO NOT ADD ANY INFORMATION TO THIS ATTACHMENT AT THIS TIME. THIS ATTACHMENT WILL BE COMPLETED AS NEEDED DURING ANY POSSIBLE CONTRACT NEGOTIATIONS THAT MAY TAKE PLACE BETWEEN THE PARTIES TO ANY AGREEMENT.

LISTING OF ALL PRODUCT PRICES

LISTING OF ALL PRODUCT MAINTENANCE PRICES

SHIP TO BILL TO ADDRESSES

DELIVERY SCHEDULE

AGENCY POINTS OF CONTACT

**ATTACHMENT B
VENDOR DATA SHEET**

Note: The vendor must have the capability and capacity in all respects to fully satisfy all of the contractual requirements. This document should be submitted with your response. Failure to complete and provide this sheet may result in finding your proposal nonresponsive.

1. Vendor's Primary Contact:

Name: _____ Telephone: () _____
Title: _____ eMail: _____

2 Years in Business: Indicate the length of time you have been in business providing this type of goods or services.
_____ Years _____ Months

3. Vendor Information:
FIN / FEI OR Social Security
Number: _____
If Company, Corporation or Partnership If Individual _____

4 Indicate below a listing of three (3) current or former clients, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods and/or services. Include a brief description of the project.

Client 1: _____ Telephone: () _____
Contact: _____ eMail: _____
Address _____ Facsimile: () _____
City/State _____ Zip Code _____
Project: _____ Contract Value: \$ _____

Client 2 _____ Telephone: () _____
Contact: _____ eMail: _____
Address _____ Facsimile: () _____
City/State _____ Zip Code _____
Project: _____ Contract Value: \$ _____

Client 3: _____ Telephone: () _____
Contact: _____ eMail: _____

Address	_____	Facsimile: ()	_____
City/State	_____	Zip Code	_____
Project:	_____	Contract Value:	\$ _____

I certify the accuracy of this information:

Signed: _____ Title: _____

ATTACHMENT C

Small Business Subcontracting Plan

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: This shall not exclude DMBE-certified women- and minority-owned 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.dmbv.virginia.gov (Customer Service).

Offeror 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 offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

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

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification #: _____ 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 when they 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, and DMBE Certificate #	Status if Small Business is also: Women (W), and/or 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
DMBE Certificate #					\$ _____
DMBE Certificate #					\$ _____
DMBE Certificate #					\$ _____
DMBE Certificate #					\$ _____
Totals \$					

ATTACHMENT D

ONLINE SALES – TERMS AND CONDITIONS

Online Sales – Terms and Conditions

Definitions. Contractor – Offeror given award to proceed with contract.

Bidder – Person submitting a bid on property

Buyer - Person awarded Online Sale

Seller – Virginia State Surplus Property

Acceptance of Terms and Conditions. By submitting a bid, the bidder agrees that they have read, fully understand and accept these Terms and Conditions of Online Sales, and agree to pay for and remove the property, if the bid is accepted, by the dates and times specified.

Guaranty Waiver. All property is offered for sale “**AS IS, WHERE IS**” at the point shown. **Virginia State Surplus Property (Seller)** makes no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. Those submitting bids are expected to examine the property and determine for themselves the information they desire concerning it. The Buyer is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.

Conflict of Interest. The “Conflict of Interest Act” applies to this sale. See Code of Virginia §2.2-3110.

Description Warranty. The description of property offered for sale has been compiled from available data, but there is no guaranty or warranty on the part of the Commonwealth as to condition or quality, or that the property offered or a portion thereof may not be withdrawn prior to the sale. No service of any kind can be furnished by the State and any cost of weighing, packaging, crating, loading, or hauling shall be assumed by the bidder unless otherwise indicated. Bidders are invited and urged to inspect the property before submitting their bid. The responsibility as to the condition of the property rests with the bidder. Under no circumstances will a refund or adjustment be made on account of property not coming up to the standard expected, nor will failure to inspect be considered grounds for such claim. Please note that upon removal of the property, **all sales are final.**

Inspection. Most items offered for sale are used and may contain defects not immediately detectable. Bidders may inspect the property prior to bidding. Property may be inspected between the hours of **8:00a.m. and 3:00p.m., Monday through Friday**, excluding legal holidays. For information, please contact the agency representative listed in “Special Instructions”.

Personal and property risk. Persons attending during inspection, sale or removal of goods assume all risks of damage of or loss to person and property and specifically release the Seller and Contractor from liability therefore. The purchaser is to assume all liability for the property after the award is made. The State will exercise its usual care for protection up to the time of removal, but will not be responsible for any loss or damage whatsoever. No property may be removed by the purchaser prior to full payment of the purchase price.

Consideration of Bid. Seller reserves the right to reject any and all bids and to withdraw from sale any of the items listed and/or to waive all technicalities.

Buyer's Certificate. Successful bidders will receive a Buyer's Certificate by email from Contractor.

Payment. Payment in full is due not later than **5 business** days from the time and date of the Buyer's Certificate. Payment shall be in the form of:

Visa/Master Card ONLY – NO EXCEPTIONS

Sales Tax. State of Virginia sales tax of 5.0% of the final purchase price will be collected at time of payment, unless successful bidder can furnish tax exemption certificate or information.

Removal All items must be removed within 10 business days from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Successful bidders are responsible for loading and removal and any and all property awarded to them from the place where the property is located as indicated on the website and in the Buyer's Certificate. The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will Seller assume responsibility for packing, loading or shipping. Property may be removed between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding legal holidays. Please contact in advance to schedule time for pick-up. For information, please contact the agency representative listed in "Special Instructions". The successful bidder must assume all liability that may be incurred in connection with the removal of the property from the premises. If the purchaser does not remove the property purchased within the specified number of days after date of the award, the Commonwealth reserves the right to retain the purchase price and re-sell the property a second time, keeping any proceeds obtained.

Vehicle Titles. Seller will issue a title or certificate upon receipt of payment. Titles may be subject to any restrictions as indicated in the item description on the website. Open titles cannot be issued. Virginia State Surplus Property will not issue replacement titles.

Default. Default shall include (1) failure to observe these terms and conditions; (2) failure to make good and timely payment; or (3) failure to remove all items within the specified time. Default may result in termination of the contract and suspension from participation in all future sales until the default has been cured. If the purchaser fails to pay for the property within ten (10) days the property purchased may be promptly re-sold in such manner as the Director may elect and the defaulting purchaser charged with loss to State, if any, together with all expense of the sale. If the Buyer fails in the performance of their obligations, Seller may exercise such rights and may pursue such remedies as are provided by law.

Authority to restrict or suspend. Current and future participation in public auctions is subject to the laws governing removal and suspension. The State Surplus Property Manager may restrict or suspend any person or firm from participation in the public sale of state-owned property who fails to complete transactions from bid. Reasons for removal or suspension includes, but is not limited to the following reasons:

1. Failure to pay for all items awarded.
2. Failure to remove all items awarded and paid for from state property with the time allowed.

Sales to Employees. No employee from the Department of General Services, under opinion from the Office of the Attorney General, is allowed to bid on surplus property handled by the Division of Purchases and Supply.