

UNSEALED REQUEST FOR PROPOSALS

ISSUE DATE: November 30, 2011

RFP Number 12DM01

TITLE: DMME – Underground Mine Emergency Video

ISSUING AGENCY: Department of Mines, Minerals and Energy
3405 Mountain Empire Rd.
PO Drawer 900
Big Stone Gap, VA 24219

Period of Contract:

Proposals Will Be Received Until **December 15, 2011, at 2:00 PM** For Furnishing The Services Described Herein.
PROPOSALS RECEIVED AFTER THE DEADLINE WILL BE RETURNED WITHOUT CONSIDERATION. Please send (via mail or courier) or hand-deliver all proposals directly to the issuing agency shown above. **DO NOT FAX OR EMAIL PROPOSALS.**

All Inquiries for Procurement Information Should Be Directed To:

Don Conklin
Procurement Officer
Department of Mines, Minerals and Energy
3405 Mountain Empire Road
PO Drawer 900
Big Stone Gap, VA 24219
Phone: (276) 523-8119
E-Mail: don.conklin@dmme.virginia.gov

All Inquiries for Technical Information Should Be Directed To:

Becky Sanders
Assistant Mine Safety Coordinator
Department of Mines, Minerals and Energy
3405 Mountain Empire Road
PO Drawer 900
Big Stone Gap, VA 24219
Phone: (276) 523-8227
E-Mail: becky.sanders@dmme.virginia.gov

This solicitation is subject to the provisions of the Commonwealth of Virginia General Terms and Conditions, the DGS/DPS Vendors Manual, and special terms and conditions as attached.

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

NAME AND ADDRESS OF ORGANIZATION:

Date: _____

By: _____

Name: _____

FEI/FIN # _____

Title: _____

eVA Registration # _____

Telephone # _____

E-Mail _____

Facsimile # _____

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

PURPOSE

The purpose of this request for proposals is to solicit unsealed proposals from qualified Video Producers to create a color, high-definition DVD video (hereinafter “video”) 30 - 35 minutes in length, which will be used to train miners on the proper emergency evacuation procedures for an underground mine emergency. The intent is to create a hard-hitting and realistic piece, using video and images from an underground mine. The video should leave the viewer with a greater knowledge and understanding of the appropriate emergency evacuation procedures to follow during an underground mine emergency.

Video outline/script is to be created by selected offeror in coordination with and approved by the Department of Mines, Minerals and Energy.

Primary Audience: Mining Industry

Video style shall include storytelling, narration, and incorporate facts and statistics about mine emergencies that have occurred in Virginia coal mines. The Department of Mines, Minerals and Energy, (hereinafter “DMME”) will provide access to the coal mines and individuals with knowledge and experience with mine emergencies.

BACKGROUND

The DMME is dedicated to training and raising the awareness of miners on emergency evacuation procedures during an underground mine emergency. Recognizing that knowledge plays a vital role in reducing underground mine fatalities, the DMME seeks to reach out to underground miners who are at risk if an emergency occurs at their mine.

STATEMENT OF NEEDS

The Offeror shall provide all necessary tools, material and equipment required for pre-production, production, and post-production of a 30 - 35 minute color DVD video.

Production Standards: All Offerors shall provide broadcast quality video production and direction in accordance with standard commercial practices recognized in the industry.

The Offeror shall provide a written plan to provide all services and staff as needed to complete the video. Plans should include a general outline of the creative approach to the material based on the information provided in this RFP.

The following tasks are required:

1. The Contractor shall contact the designated DMME point of contact within 10 business days from date of award, and as often as needed to ensure completion the project within the requirements of this proposal.
2. The Contractor with assistance from DMME when necessary shall be responsible for pre-production work including script writing and revisions, logistical decisions, and arrangements with talent, production personnel and locations.

3. DMME shall assist the Contractor in securing DMME recommended locations and in coordinating participants and extras to appear in the video.
4. The DMME shall coordinate times and locations with the Contractor's Video Director.
5. The Contractor shall coordinate with the DMME on all aspects of production and post-production.
6. DMME shall assist Contractor in creating a shooting schedule for each location.
7. The Contractor shall provide all equipment, materials and personnel necessary for location shoots that may include Engineers, Recordist/grips, Gaffers, and Production Assistants.
8. The Contractor shall direct shoot, coordinate the action with the talent and determine appropriate camera movement.
9. The Contractor shall be responsible for obtaining all necessary release forms for individuals appearing or heard on the DVD.
10. The Contractor shall edit the video to the satisfaction of the DMME and The Mine Safety and Health Administration (hereinafter "MSHA").
11. The Contractor shall provide four (4) DVD Final Masters to DMME that can be replicated.
12. The Contractor shall provide all music services. The Contractor shall provide all necessary licensing documentation to establish the Contractor's legal authority to use stock production music in accordance with all applicable copyright law.
13. The Contractor shall provide to DMME all raw footage shot for the video upon completion of the project.
14. The Contractor shall create and provide full color graphic designs for the DVD label, amaray case, amaray case label, and the amaray case insert. The DMME will have final approval of all designs. The Contractor shall provide graphic designs in electronic format to the DMME for future reproduction.
15. The Contractor shall provide 2500 DVD copies of the final video with amaray case, amaray case label, DVD label, and amaray insert, fully assembled.
16. The DMME shall be project manager **with final approval of all steps** in the development and production of this video.

PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

In order to be considered for selection, offerors must submit a complete response to the Unsealed Request for proposals. One original and 3 copies of each proposal must be submitted to the Virginia Department of Mines, Minerals and Energy. No other distribution of the request for proposals shall be made by the Offeror.

Deliveries shall be made to the Virginia Department of Mines, Minerals and Energy and directed to the attention of:

Mr. Don Conklin
Procurement Officer
Department of Mines, Minerals and Energy
3405 Mountain Empire Rd
P.O. Drawer 900
Big Stone Gap, VA 24219

Proposal Preparation:

An ***authorized representative*** of the offeror shall sign the proposal. All information requested should be submitted.

Proposals should be prepared providing straightforward and a concise description of capabilities to satisfy the requirements of the request for proposals.

All pages of the proposal should be numbered. Information that the offeror desires to present that does not fall within any of the requirements of the request for proposals should be attached at the end of the proposal. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find the proposal requirements are specifically addressed.

Samples of Work:

In addition to general work samples, the contractor must provide samples of videography created in an underground environment (coal mining scenarios preferred) and are similar in nature and scope to the project outlines in this RFP. Samples are to be provided on CD or DVD.

Procurement questions concerning this Request For Unsealed Proposals may be submitted in writing to Don Conklin via fax: (276) 523-8121 , or by email at the following address: don.conklin@dmme.virginia.gov, until Noon (12:00 p.m.), December 15, 2011.

Technical questions concerning this Request for Unsealed Proposals may be submitted to Becky Sanders via fax: (276) 523-8239, or by email at the following address: becky.sanders@dmme.virginia.gov, until Noon (12:00 p.m.), December 15, 2011.

The closing date for receipt of applications under this Request for Proposals is 2:00 p.m., Thursday, December 15, 2011. Late proposals will not be accepted. Faxed and/or emailed proposals will also not be accepted.

Specific Proposal Instructions:

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

- 1) The return of the Cover Sheet (page 1), Offeror Data Sheet (Attachment B), and Addenda, if any, signed and filled out as required.
- 2) A written narrative statement to include offeror's experience in providing the video production services described herein. This shall include a description of the offeror's background and experience including the names, qualifications and experience of personnel conducting the project, including resumes. **Offeror must submit samples of videography created in an underground environment for review.**
- 3) Work plan to provide the proposed services that includes:
 - a. Creative Approach;
 - b. Details of what services will be performed;
 - c. Project management strategy to support the delivery of services;
 - d. Time frame to complete the project, including a proposed work plan.
- 4) Proposed Price:

The Offeror agrees to provide all services in compliance with the statement of needs and the Terms and Conditions at a firm and fixed price, not to exceed a total of \$ 50,000.
- 5) Attachment A, Contractor Reference Sheet shall be completed and include all required reference information.
- 6) Completed W-9 – Request for Taxpayer Identification Number(s) and Certification.

EVALUATION AND AWARD CRITERIA

1. Evaluation: Unsealed proposals upon receipt shall be opened and evaluated by an evaluation committee established by DMME. Proposals will be ranked by the committee not later than Thursday, December 22, 2011. The evaluation will be based upon the information provided in the offeror's proposal; additional information that may be requested for clarification or during negotiation; or information obtained from references and independent sources.

Offeror's shall also be evaluated on their response to all criteria; Offerors shall specifically address criteria in their response.

Offerors will describe any deviations for expectations to the specifications or requirements.

It is the policy of DMME to evaluate proposals as submitted and not notify offerors of deficiencies in their response. A proposal may be rejected if it is conditional or incomplete in the judgment of the DMME.

2. Evaluation Criteria: Unsealed proposals will be evaluated using the following criteria:

	<u>POINT VALUE</u>
Experience including capabilities and skill, staff experience, equipment and resources	40
Specific plan or methodology to be used to perform the services including creative approach	30
References, resumes & samples of video work created in an underground environment	30

3. Award: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Unsealed Request for Proposals. Negotiations shall be conducted with offerors so selected. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The commonwealth may cancel this Unsealed Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

REPORTING AND DELIVERY REQUIREMENTS

The DMME shall oversee and monitor the contract and shall be the point of contact for the project. The Contractor shall designate a Project Manager to plan and coordinate the performance of the work and serve as the DMME primary point of contact.

The DMME and MSHA will own all video, film or photographs taken throughout production and owns the rights to use such materials in any desired manner.

The contractor shall perform tasks and produce the required deliverables by the due dates as follows:

Final Outline & Preproduction Schedule for Approval by DMME	No later than March 31, 2012
Video filming completed	No later than April 30, 2012
Draft Video for DMME Review	No later than May 31, 2012
Final Video, plus 2500 copies for DMME	No later than June 30, 2012

METHOD OF PAYMENT

The contractor shall submit invoices according to the following schedule:

- 15% Pre-Production Expenses
- 15% upon approval of the Final Outline and Pre-Production Schedule
- 35% upon delivery of draft video for review
- 35% upon delivery of final video plus 2500 copies and final invoice with breakdown of all services provided.

All invoices must reference the Contractor's Federal Identification Number, the contract Number, and detailed descriptions of items and/or services rendered. The invoices shall be submitted to:

Virginia Department of Mines, Minerals and Energy
Accounts Payable Department
P.O. Drawer 900
3405 Mountain Empire Rd
Big Stone Gap, VA 24219

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are required for use in written solicitations issued by state agencies for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parentheses. For service contracts clauses, Q, R, and S are normally not applicable and may be omitted. For goods contracts, omit clause T.

- 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 (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 IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):**
1. **(For Invitation For Bids):** 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.
 2. **(For Request For Proposals):** 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 (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:**

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 (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.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) 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/offers) 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/offers) 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.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

- 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.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

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

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

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

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

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

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

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,925,000 per occurrence, \$3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <u>Code of Virginia</u> .)	
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

*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - Required in all solicitations where a contractor will perform work or services in or on state facilities. The limits are minimums and may be increased. The Department of Treasury, Division of Risk Management (804-786-3152) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.**

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

* **When Used:** Include in all solicitations over \$50,000.

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.

* **When Used:** This clause shall be included in every contract over \$10,000. If procuring by unsealed solicitation, the Commonwealth’s General Terms and Conditions may be incorporated by reference.

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.

* **When Used:** This clause shall be included in all solicitations using an Invitation for Bids or Request for Proposal (*Code of Virginia, § 2.2-4343.1H*).

X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. **To be considered for an award, vendors must register in eVA prior to award.** All bidders or offerors not registered with eVA will result in the bid/proposal being rejected.

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

- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
 - c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- * When Used: Include in all solicitations, contracts, and contract renewals. In addition, this General Term and Conditions must be incorporated or incorporated by reference in all purchase orders issued by state agencies and institutions except for the procurement types which are excluded in section 14.9 or as otherwise provided in 14.10a.**

- 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. 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.

SPECIAL TERMS AND CONDITIONS

1. 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.

Any contractor that expends \$300,000 or more in combined federal funding is required at its expense to have an independent contract audit performed annually in accordance with the Single Audit Act and OMB Circular A-133. Three copies of the audit report will be sent to the Commonwealth within thirty days after receipt of the report by the institution or agency.
2. 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.

3. Cancellation of Contract: The purchasing agency, Virginia Department of Mines, Minerals and Energy, reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 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.
4. Smoke Free Environment: By signing this contract, the Contractor certifies to the Commonwealth that they will comply with the requirements of Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provisions of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.
5. Minority/Women Owned Business Subcontracting and Reporting: When it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, The Contractor is encouraged to offer such business to minority and/or women owned business. Names of firms may be available from the Commonwealth and/or from the Division of Purchases and Supply. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted, and type of product/service provided.
6. Prime Contractor Responsibilities: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he/she 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.
7. 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 requirement of this contract.

8. Contractor as Independent Contractor: During the performance of this contract, the Contractor shall be regarded as an independent contractor and not as an agent or employee of the Commonwealth of Virginia or the Commonwealth. The Contractor shall be responsible for all its own insurance and federal, state, local and social security taxes.
9. Confidentiality: any information obtained by the contractor concerning recipients of services under this agreement shall be treated as confidential in accordance with relevant provisions of State and federal law.
10. Contractor Performance: The Commonwealth may monitor and evaluate the Contractor's performance under the contract through analysis of required reports, expenditure statements, site visits interviews with or surveys of relevant agencies/organizations and individuals having knowledge of the Contractor's services or operations, audit reports, and other mechanisms deemed appropriate by the Commonwealth. Performance under this contract shall be a primary consideration for extension of this contract and may be a consideration in future contracts awards and negotiations.
11. Ownership of Material: Ownership of all data, material, reports, studies, photographs, negatives, films, videos, or other documents prepared by the Contractor in the performance of its obligations under this contract 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 applicant shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the applicant must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. The Contractor shall not use, willingly allow or cause to have use such materials for any purpose other than performance of the Contractor's obligations under this contract without the prior written consent of the Commonwealth. Any materials produced under this contract must have prior approval of the Department of Mines, Minerals and Energy, have a statement that project was supported by the Commonwealth and bear the Department of Mines, Minerals and Energy name and logo.