



DIVISIONS
ENERGY
GAS AND OIL
GEOLOGY AND MINERAL RESOURCES
MINED LAND RECLAMATION
MINERAL MINING
MINES
ADMINISTRATION

COMMONWEALTH OF VIRGINIA

Department of Mines, Minerals and Energy

Washington Building / 8th Floor
1100 Bank Street
Richmond, Virginia 23219-3638
(804) 692-3200 FAX (804) 692-3237
www.dmme.virginia.gov

Request for Proposals

1.00 Virginia Green Community Program (VGCP) Design and Administration

1.01 Specific Authority: [Executive Order 36](#) signed by Gov. Terry McAuliffe Dec. 10, 2014, directs the establishment of a Virginia Green Community Program (VGCP) using Qualified Energy Conservation Bonds (QECCB).
[Virginia Senate Bill 1416](#) enacted in March 2007 amended the Virginia Utility Restructuring Act to include an energy efficiency goal of 10 percent electricity savings by 2022 relative to 2006 base sales.
[Recommendation 2-A](#) in the 2014 Virginia Energy Plan (VEP) accelerates the 2007 voluntary 10 percent electricity conservation goal by two years to 2020.
[Title 26 Section 54D, Internal Revenue Code](#) identifies a "green community program," as a conservation purpose that qualifies as an eligible use of QECCB funds.
[Internal Revenue Service Notice 2012-44](#) provides guidance concerning what constitutes a "green community program" under § 54D(f)(1)(A)(ii).

1.02 Request Issued By: Virginia Department of Mines, Minerals and Energy (DMME)

1.03 Request Issued: March 18, 2015

1.04 Responses Due: Proposal responses may be delivered by hand, United States Postal Service, delivery/courier service, or provided by email in the form of an electronic attachment.

It is the responsibility of any offerors submitting proposals by email to ensure their proposal shall be received at the email address identified below no later than **4 pm Eastern Time on April 30, 2015**. Any responses received via email after that time will not be opened. An email responder is not required to follow-up with the provision of a hard copy to DMME.

Proposals mailed, delivered by hand, or courier must be received at DMME no later than **4 pm Eastern Time on April 30, 2015**. Proposals received after that time on that date will not be accepted.

DMME reserves the right to reject any and all proposals, at any time, whenever such is in the interest of the Commonwealth of Virginia. This is an unsealed proposal solicitation, thus all proposals shall be reviewed upon receipt.

1.05 Response Process: **Emailed responses should be submitted** as an email attachment that consists of **1 complete electronic copy** of the entire response to:
Al.Christopher@dmme.virginia.gov

Responses may be hand delivered or sent by USPA or a delivery/courier service to:

**Al Christopher
DMME
1100 Bank Street, 8th floor
Richmond VA 23219**

1.06 General Questions: Please direct inquiries to:
**Al Christopher, Director – Energy Division
VA Department of Mines, Minerals and Energy
804-692-3216
Al.Christopher@dmme.virginia.gov**

2.00 Introduction and Background

2.01 Importance of the Issue

“The Commonwealth of Virginia endeavors to facilitate the use of all available tools for projects that reduce energy consumption and encourage energy efficiency and conservation in the public and private sectors. Federal Qualified Energy Conservation Bonds (QECBs) are significant tools that can be used by the state and local governments, as well as the private sector, to lower the cost of financing energy efficiency, conservation, and renewable generation projects. QECBs are tax credit or direct pay bonds that may be issued by states, political subdivisions, and entities empowered to issue bonds on behalf of such entities, including eligible issuers in conduit financing issues for one or more qualified conservation purpose(s).”¹

2.02 Green Community Program Initiative

2.02.01 “The Director of the Division of Energy of the Department of Mines, Minerals and Energy will act as the QECB Allocation Director, and work in conjunction with the Executive Director of the Virginia Small Business Financing Authority. The QECB Allocation Director will establish a process to develop a green community program and to consider such programs, with other eligible QECB uses and programs, in determining the allocation and reallocation of any unallocated amounts or waived amounts as described to applicants.

¹ [Executive Order 36](#) – Continuing Qualified Energy Conservation Bonds, December 10, 2014.

2.02.02 The QECB Allocation Director is further directed to issue a Request for Proposal (RFP) to select a firm or firms for the administration of the green community program within 60 days of issuance of this Executive Order. No bonds issued under allocations provided by this Executive Order will be state-supported debt without prior approval of the General Assembly.”²

2.03 Commonwealth Energy Policy - Recommendations

2.03.01 Recommendation 5-C in the 2014 Virginia Energy Plan calls for the creation of “flexible financing mechanisms to help to put in place key additional energy assets and support priority energy programs.

2.03.02 “Objectives of the funding mechanism would include: provision of low-cost financing for energy program delivery and projects to expand or improve energy infrastructure, including renewable energy systems, energy conservation and efficiency and alternative fuels; increase local economic activity; create jobs; and leverage private funding and markets.

2.03.03 “Use of Virginia’s Qualified Energy Conservation Bond (QECB) allocation and other funding sources could provide low-cost financing options for: Energy Performance Contracting (EPC) to improve building energy efficiency; deployment of energy efficiency measures and programs, and renewable energy systems; and alternative transportation refueling infrastructure.”³

2.03.04 In addition to the specific recommendation for flexible funding mechanisms, the 2014 Virginia Energy Plan also includes the following recommendations and goals for energy efficiency, alternative fuels and renewable energy generation that could be facilitated and accelerated by financing opportunities in a green community program:

2.03.05 VEP Recommendation 2-A: “The 2007 Virginia Energy Plan established a voluntary goal of reducing energy consumption at the retail level by 10% by 2022, against a 2006 baseline. The State Corporation Commission analyzed this goal and determined that it was feasible.

2.03.06” Establish the Board on Energy Efficiency to develop a strategic plan to achieve the voluntary goal of reducing energy consumption by 10 percent by 2020, accelerating the 2007 Virginia Energy Plan goal by two years.”⁴

2.03.07 The Board on Energy Efficiency is charged with, among other things:

- Identification of creative financing tools that can be used at both the generation and demand side levels and making recommendations for their implementation.
- Recommendation of any new programs or policy changes that would support energy efficiency building upgrades for low-income Virginians – particularly in Southside and Southwest Virginia.

2.03.08 VEP Recommendation 2-B:

“Create, within the administration, a Chief Energy Efficiency Officer to oversee the aggressive implementation of energy efficiency measures in state agencies, including Energy Performance Contracting (EPC). Accomplish the goal of reducing electricity consumption in State facilities by 15 percent through EPC by 2017. Reinstitution a commissioning/re-commissioning pilot program in State facilities.”

² *ibid*

³ [2014 Virginia Energy Plan - Section 12 - Recommendations](#)

⁴ [2014 Virginia Energy Plan - Section 12 - Recommendations](#)

2.03.09 VEP Recommendation 6-B: “The Commonwealth will work to create and promote additional public/private partnerships to double the total deployment of all types of alternative fuel refueling infrastructure for State fleet and public motoring use.

2.03.10 “Virginia is a national leader in effective and mutually beneficial public-private partnerships. Using this expertise, the Administration will proactively communicate and collaborate with private partners to advance a greater availability of alternative fueling stations. This could involve leveraging State vehicle fleets to provide the volume of vehicles needed for the financial viability of building new fueling infrastructure. Virginia now has around 400 alternative fuel stations for biodiesel, natural gas, ethanol, electricity, and hydrogen, including nearly 250 electric vehicle charging stations. The Commonwealth should work to double the number of alternative fuel fueling stations to reach 800 by the close of the Administration.”⁵

2.03.11 VEP Recommendation 1-B: “Facilitate partnerships between Virginia’s electric utilities, government and private generation developers to install 15MW of solar energy generation at state and local government facilities by June 30, 2017. Additionally, the Authority should facilitate the installation of an additional 15MW of solar energy generation at commercial, industrial, and residential facilities by the same target date of June 30, 2017.”⁶

3.00 Objectives of the RFP:

3.01 DMME seeks proposals to design, develop and administer a Virginia Green Community Program that complies with the requirements of [Title 26 Section 54D, Internal Revenue Code](#) , [Internal Revenue Service Notice 2012-44](#), [IRS Notice 2009-29](#) , [IRS Notice 2010-35](#) and which will provide low-cost financing and other services to assist in the achievement of the objectives and recommendations contained in [Executive Order 36](#) and the 2014 Virginia Energy Plan, including but not limited to the following:

- 3.01.01 Energy program delivery and projects to expand or improve energy infrastructure, including renewable energy systems, energy conservation and efficiency and alternative fuels, which will result in an increase in local economic activity, create jobs and leverage private funding and markets.
- 3.01.02 Energy Performance Contracting (EPC) to improve building energy efficiency to help accomplish the goal of reducing electricity consumption in State facilities by 15 percent through EPC by 2017.
- 3.01.03 Reinstigate an energy retro-commissioning pilot program in State facilities.
- 3.01.04 Offer creative financing tools that can be used at both the generation and demand side.
- 3.01.05 Support energy efficiency building upgrades for low-income Virginians – particularly in Southside and Southwest Virginia.
- 3.01.06 Promote additional public private partnerships to double the total deployment of all types of alternative fuel refueling infrastructure for government and private fleets and public motoring use.

⁵ Ibid

⁶ 2014 Virginia Energy Plan – Section 12 - Recommendations

- 3.01.07 Facilitate partnerships between Virginia’s electric utilities, government and private generation developers to install 15MW of solar energy generation at state and local government facilities, and an additional 15MW of solar energy generation at commercial, industrial and residential facilities by June 30, 2017.

4.00 Prohibitions:

4.01 No bonds issued under allocations provided by Executive Order 36 will be state-supported debt without prior approval of the Virginia General Assembly.

5.00 Green Community Program Requirements

5.01 DMME requests proposed Green Community Program designs that would use \$20 million in QECCB allocation to the Commonwealth and deploy these funds by the end of Calendar Year 2016 for eligible public and private purposes that address as many as possible of the objectives listed in Section 3, objectives of the RFP; that are available statewide; that leverage private markets; that support Section 2.03 Commonwealth Energy Policy – Recommendations; and which are in compliance with each of the sources of authority cited in Section 1.01, “specific authority.”

5.02 Proposed programs must use a conduit issuer to ensure that each project funded by the Green Community Program is underwritten in a way whereby the project credit stands on its own and does not impact the general obligation or credit of the Commonwealth.

5.03 Proposals shall describe how the Green Community Program administrator will work with the Virginia Small Business Finance Authority, the Virginia Resources Authority or other qualified conduit issuer and private entities to ensure that the general obligation or credit of the state is not impacted.

5.03.01 Contact information:

Scott E. Parsons
Executive Director
Virginia Small Business Financing Authority
(804) 371-8256
scott.parsons@sbsd.virginia.gov

Peter D’Alema
Director of Program Management
Virginia Resources Authority
1111 E. Main Street, Suite 1920
Richmond VA 23219
(804) 616-3446
pdalema@virginiaresources.org

5.04 Proposals shall describe how the VGCP and administrator will originate, underwrite, document, close and service loans or other repayment mechanisms, enforce timely repayment and collect bad debt.

5.05 Proposals shall describe how the VGCP and administrator will achieve economies of scale, conduct cost-effective bond issuance, reduce bond and loan transaction costs and maintain low administrative costs that

will enable effective quality and compliance assurance while providing loans or other repayment mechanisms that are low-cost and attractive to leverage other funds and to finance to the extent allowable in the IRS regulations a broad scope of qualified conservation measures for energy efficiency, water conservation, alternative fuels and renewable generation.

5.06 Proposals shall describe and provide examples of the following:

5.06.01 Types of energy efficiency, alternative fuel and renewable generation projects, measures and equipment that will be eligible for VGCP funding

5.06.02 Characteristics and attributes of projects that will be eligible for loans, including payback period, minimum and maximum loan amounts, percent of leveraging of other funds

5.06.03 Loan Application Process and Procedures, as applicable, including selection and approval criteria

5.07 Proposals shall describe how the VGCP and administrator will provide for bond counsel, placement fees and other transaction costs, as well as monitor and ensure compliance with all program requirements, including the special federal terms and conditions, such as Davis-Bacon Act and Buy American provisions.

5.08 DMME seeks proposals that would employ independent third parties to monitor for compliance. Proposals should specify how program revenue from fees will be generated to pay the costs of compliance oversight. Offerors may describe how they would utilize existing experienced monitoring personnel at DMME or other independent third parties with equivalent experience.

5.09 DMME seeks proposals that will use Virginia-based organizations to deliver and administer VGCP services to the greatest extent practicable.

5.10 Offerors should describe how the VGCP and administrator will work with DMME to efficiently obtain input from the agency and the Office of the Secretary of Commerce and Trade in the design, implementation and administration of the VGCP, perhaps through a board, committee, working group, or other mechanism to be described by offerors. The VGCP and administrator also shall work with DMME regarding possible additional allocation of QECB authority to the program, which might be authorized by Executive Order 36, as described in Section 2.02.01

5.11 Offerors shall propose the content and nature of reporting to DMME, which is to be no less than quarterly in frequency. Reports shall satisfy the minimum requirements of federal and state terms and conditions attached to QECB funds and address specifically by item how VGCP is compliant with all requirements in IRS guidance. Financial and program metrics reporting is required and should be comprehensive enough to characterize the progress and status of programs and loans. Reporting shall include quarterly updates to basic program metrics and successes in PowerPoint slide format to facilitate occasional presentations and appropriate for display on the VGCP website.

5.12 Offerors shall describe how the administrator will produce, update, maintain, host or arrange for hosting, and pay for all costs of a website or web pages and how offeror will provide basic VGCP program information, including information about and provision for customer downloading of forms, document templates, program guidelines, Q&A, factsheets and other materials necessary to administer the VGCP.

5.13 The VGCP administrator will be responsible for the preparation of Forms 8038, 8038-CP and/or 8038-TC, as applicable and required for documentation to the U.S. Treasury, and any other paperwork needed to obtain the QECB credit subsidy and remain in compliance with any QECB-associated requirements.

5.14 Offerors shall describe the types and amounts of fees and all other revenues that will be produced by the proposed program, and explain how all fees and other revenues will be transparently disclosed, collected, reported to DMME and used by the administrator to reimburse the administrator for its costs, any other expenses or overhead and profit.

5.15 Proposals shall include a marketing and communications plan, including a description of experience that the offeror team has in driving demand for programs like this, tactics and strategies that will be employed, potential partners who can assist and how offeror would work with and coordinate with DMME.

6.0 Team qualifying requirements and eligibility

Members of a proposal team or organization should have appropriate education, background and experience to design and administer a Green Community Program that is fully compliant with [Title 26 Section 54D, Internal Revenue Code](#) and [Internal Revenue Service Notice 2012-44](#) ; that can meet the objectives of the RFP described in Section 3; and the program requirements described in Section 5. Offerors should describe and provide examples of similar projects that the team or organization has managed successfully.

7.0 Proposal requirements, selection process and merit review criteria

7.01 Specific Requirements of Proposal

7.01.01 Clarity of Proposal: Proposal 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.

7.01.02 Ownership of all Materials: Ownership of all data, materials and documentation originated and prepared for the Commonwealth pursuant to the RFP shall belong exclusively to the Commonwealth and be subject to public inspection in accordance with the Virginia Freedom of Information Acts.

7.01.03 Project Outline, Project Management and Marketing Plan with Budget: Offeror is to describe how the proposed work will achieve the objectives and major tasks generally in a Project Outline and specifically in a Project Management and Marketing Plan with Budget that is funded entirely by program fees and other revenues. A summary of key steps, activities and tasks, with start and completion dates, are to be proposed in the form of a project management and marketing plan with budget. The budget costs shall be justified and shall reference tasks in the project management plan.

7.01.04 Qualifications of Offeror: Offerors should provide their qualifications to conduct the activities in their proposal by providing resumes, company profile(s), and examples of similar work.

7.02 Proprietary Information

Trade secrets of proprietary information submitted by a offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of §2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected, including the section of the proposal in which it is contained, the page numbers, 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. In addition, a summary of the proprietary information contained in the proposal shall be submitted on "Appendix C: Proprietary/Confidential Information Identification Form" provided with this solicitation.

The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the offeror refuses to withdraw such a classification designation, the proposal will be rejected.

7.03 Detailed Response Instructions

Responses may be sent by email in the form of an electronic attachment, hand delivered, or sent by a delivery service. If emailed, responses shall be received at either email address identified below no later than 4 pm Eastern Time on April 30, 2015. A responder is not required to deliver or send a hard copy but may deliver the proposal no later than 4 pm Eastern Time on April 30, 2015, or mail a proposal that is post marked no later than April 30, 2015. Proposals received or post marked after that time and date will not be accepted. DMME reserves the right to reject any and all proposals, at any time, whenever such is in the best interest of the Commonwealth of Virginia. DMME requests open proposals, not sealed proposals, thus proposals may be reviewed upon receipt.

Emailed responses should be submitted as an email attachment that consists of **1 complete electronic copy** of the entire response to:

Al.Christopher@dmme.virginia.gov

Responses may be hand delivered or sent by a delivery service to:

**Al Christopher
DMME
1100 Bank Street, 8th floor
Richmond VA 23219**

Proposals should include:

- Cover page with lead organization's name and contact person with phone, email and postal address
- One-page executive summary
- Margins should be not less than one-half inch and font size not less than 11 points.
- Proposal narrative not to exceed 30 pages. Resumes, company profiles and examples of similar work do not count toward the 30-page limit.
- Project management plan and marketing plan with budget (using fee and other program revenue), not to exceed 10 pages.

7.04 Questions about this RFP

All questions regarding the content of this RFP must be submitted on or before 4:00 p.m. on Wednesday, April 22, 2015 to the email addresses provided above with the email subject line "RFP Question." Questions (worded as submitted to DMME) and answers will be published on the DMME web page where this RFP is posted. Responders are responsible for monitoring the website where this RFP is posted for all information related to the RFP. Questions received after this time might not be answered.

7.04.01 Optional Pre-proposal conference:

An optional pre-proposal conference will be held on March 26, 2015 at the Washington Building on Capitol Square, 1100 Bank Street, DMME conference room, 8th floor, Richmond VA 23219 from 1:00 to 3:00 pm Eastern Time. The purpose of the conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. Attendance is not required and will not be a prerequisite to submitting a proposal. Bring a copy of the solicitation with you if you attend in person. Interested offerors also may attend by phone, using the following conference service: Phone: 866-842-5779; Pass Code: 804-692-3224. Any changes in the RFP resulting from this conference will be issued in a written addendum to the solicitation. Questions and answers provided at the meeting will be posted on the DMME web page where this RFP is posted.

7.05 Addenda to RFP

The DMME may modify this RFP prior to the date fixed for submission of proposals by issuance of an addendum and posting this addendum on the DMME website where the RFP is posted. Addenda will be numbered consecutively, the first being A-1. Responders are responsible for monitoring the website where this RFP is posted for all information related to the RFP.

7.06 Response to RFP

All information requested in the RFP should be submitted. Failure to submit all information requested may result in DMME requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal, or a declaration of non-responsive. Proposals declared non-responsive are those substantially incomplete or which lack key information and, therefore, are subject to rejection. Proposals should be as thorough and detailed as possible so that the offeror's capabilities to provide the required goods and services may be thoroughly evaluated.

7.07 Award

Selection shall be made of one 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 fees. Negotiations may be conducted with the offeror(s) so selected. Fees 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 one offeror, which, in its opinion, has made the best proposal, and shall award the contract to that offeror to design and administer a VGCP to use up to \$20 million in QECB allocation to the Commonwealth and deploy these funds by the end of Calendar Year 2016. 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). The award document package will include a contract incorporating by reference all the requirements, terms and conditions of the solicitation, and the contractor's proposal as negotiated.

7.08 Merit Review Criteria

Offeror should identify in the proposal, using the following lettered sub-sections, how it satisfies or addresses each review criteria. Proposals that fail to specifically address each of the merit review criteria may be given lower merit evaluations.

- A. Adequacy of project management (work) and marketing/communications plan (30 points)
- B. Unique or innovative approaches demonstrated by the proposed work plan (10 points)

- C. Demonstrated team knowledge of state of the art in scoped tasks (20 points)
- D. The team's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral to meeting the topic objectives (15 points)
- E. The qualifications and experience of the proposed principal investigator, and of key sub-contractor personnel integral to meeting the topic objectives (10 points)
- F. Realism of the plan to obtain adequate program revenues and fees, degree of transparency regarding sources, amounts and uses of program revenue and fees (15 points)

7.09 Oral Presentation

Offerors who submit a proposal in response to this RFP may be asked to give an oral presentation of their proposal. 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. Oral presentation are an option and may or may not be conducted, thus offerors should assure that their proposals are complete, clear and concise at the time of submission.

7.10 Terms and Conditions Review

Offerors should review Attachment 2, General Terms and Conditions, and Attachment 3, Special Terms and Conditions. Portions of both of these attachments are mandatory for all contracts and other portions apply on a case by case basis or only for procurement of some types of goods and services. Mandatory and appropriate terms and conditions will apply to any award made pursuant to this RFP. Offeror should review and identify any provisions that offeror objects to or does not understand and provide specific comments in the proposal so that these concerns can be considered by DMME and discussed prior to award.

7.11 Method for Payment

The VGCP is intended to be self-sustaining. However, if there is an instance requiring a payment from DMME, the payment will be made (in accordance with the Virginia Prompt Payment Act) within 30 days after receipt of a valid invoice and verification of satisfactory goods, received and/or completion of work, as applicable.

7.12 Invoicing

The VGCP is intended to be self-sustaining. However, if there is an instance requiring an invoice to DMME, invoices may be submitted monthly. Invoices shall include the contract number, purchase order number, itemized quantities, unit price, and extended costs based on the contract pricing schedule. Invoices must be sent to the individual addresses listed on each purchase order or agency purchase order. No payment will be made to subcontractors. The contractor shall be fully responsible for all invoicing to applicable agencies.



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AGREEMENT

Department of Mines, Minerals and Energy and

_____ **Agreement Number: C** _____

This **Agreement**, entered into this ____ day of _____, 2015, by-
_____, hereinafter called the "Contractor," and the Virginia Department of
Mines, Minerals and Energy (DMME).

SCOPE: DMME will support and Contractor will execute the project outlined in *Attachment 1*
_____ subject to all of the requirements, terms and conditions of this agreement.

PERIOD OF PERFORMANCE: The project period of performance begins on the date of this
agreement and ends on December 31, 2017. The agreement may be terminated prior to or extended
beyond December 31, 2017 as mutually agreed by DMME and Contractor.

PROJECT BUDGET: \$20,000,000 of Virginia's allocation of federal Qualified Energy
Conservation Bond (QECB) authority shall be administered in the Virginia Green Community Program
(VGCP) by Contractor as described in Attachment 1. Up to \$60,000,000 in additional QECB authority
allocation may be made to the VGCP as allowable and available, and according to the terms of the
Request for Proposals, Virginia Green Community Program Design and Administration, attachment 4.

COMPENSATION AND METHOD OF PAYMENT: Contractor shall receive all
remuneration for allowable program administration expenses from program revenue as described in
Attachment 1. Contractor shall create invoices, reports or use other transparent methods acceptable to
DMME to fully disclose its costs and characterize program revenues by source and amount. Invoices must
be approved by DMME and the terms and conditions of this agreement must be satisfied before
Contractor draws on program revenues.

REPORTING: As specified in Attachment 1.

AUTHORITY: As specified in Section 1.01 of the Request for Proposals, Virginia Green Community
Program Design and Administration, attachment 4.

AGREEMENT DOCUMENTS: The agreement shall consist of the following, all of which
documents are incorporated herein:

- 1) *This signed Agreement*
- 2) *Attachment 1 PROPOSAL*

- 3) *Attachment 2 General Terms and Conditions*
- 4) *Attachment 3 Special Terms and Conditions*
- 5) *Attachment 4 Requests for Proposals Virginia Green Community Program Design and Administration*

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

**Virginia Department of Mines,
Minerals and Energy**

By: _____

By: _____

Conrad T Spangler, III
Director

Title: _____

Print Name: _____

Date: _____

Date: _____

Attachment 2
Virginia Green Community Program Requests For Proposals
REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES

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.

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

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

- C. **ANTI-DISCRIMINATION:** By submitting their (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.

- PIM 98-032 → F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation,. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

- 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 terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may 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/offerors) to the specific brand, make or manufacturer named, but

conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

(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.

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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 and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<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.)

\$2,150,000 per occurrence, \$4,250,000
 aggregate

(Limits increase each July 1 through fiscal year 2031 per *Code of Virginia* § 8.01-581.15.

Insurance/Risk Management aggregate		\$1,000,000 per occurrence,	\$3,000,000
Landscape/Architecture aggregate		\$1,000,000 per occurrence,	\$1,000,000
Legal aggregate	aggregate	\$1,000,000 per occurrence,	\$5,000,000
Professional Engineer aggregate		\$2,000,000 per occurrence,	\$6,000,000
Surveying aggregate		\$1,000,000 per occurrence,	\$1,000,000

*** 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 as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

*** When Used: Include in all IFB and RFP solicitations.**

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, CONTRACTS, AND ORDERS:**

The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

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

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

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

*** 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.**

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 IN ACCORANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD**

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

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

BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its

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certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

ATTACHMENT 3 - SPECIAL TERMS AND CONDITIONS

**SPECIAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES**

INDEX - SPECIAL TERMS AND CONDITIONS

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MANDATORY FOR MOST CONTRACTS

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.

2. **AWARD OF CONTRACT:** All solicitations must specify the method of award. Use the appropriate Award clause below in J. or K. if the total award including all possible renewal periods is expected to exceed \$50,000 and the purchasing agency desires the option to award to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror. The wording on award to other than the lowest priced bidder or highest ranking offeror may be customized from the selection below to fit the circumstances of the purchasing agency. Select appropriate clause for the type of procurement:
 - K. **AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S):** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, the contract may be awarded to a reasonably ranked DMBE-certified small business offeror(s), that is other than the highest ranking offeror(s). The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

3. **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.

4. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in purchase order(s) with the eVA transaction fee specified below assessed for each order.
 - a. For orders issued July 1, 2011 thru December 31, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.

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

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

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

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

AS INDIVIDUAL PROCUREMENTS MAY DICTATE

5. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
6. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the negligence of the using agency.
7. **LIMITATION OF LIABILITY:**
 - B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed **\$310,000.00**. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.
8. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
 - A. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
 - C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution once upon commencing performance of the contract and once

upon completion of the contract, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

9. **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.
10. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
11. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.