



COMMONWEALTH OF VIRGINIA  
DIVISION OF PURCHASES & SUPPLY (DPS)  
1111 East Broad Street, 6<sup>th</sup> Floor, Receptionist/Bid Receiving, Richmond, Virginia 23219

*(Includes Addendum #1 & 2, issued 6/21/16. Due -date extensions in red throughout)*

**REQUEST FOR PROPOSAL (RFP) # E194-193**

**Low Floor Transit Buses, Heavy Duty, 12 Year  
(30, 35, 40, 60 ft. sizes)**

**NIGP Commodity Codes: 07192- Vans Passenger Coaches, 55600- Mass Transit Buses**

**Issue Date: 5/31/16 • Due Date/Time: 8/15/16 - 1:00 P.M. EST**

**Proposals received after the due date and time will not be considered.  
Proposals will not be accepted by facsimile transmission or email.**

**DPS Statewide Strategic Sourcing Officer: Dennis Donahue  
E-mail Address: [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov)**

**USING AGENCY AND/OR LOCATION WHERE WORK WILL BE PERFORMED** : All Commonwealth of Virginia agencies, institutions of higher education, or other public bodies (collectively "Authorized Users") as defined in *Code of Virginia* §2.2-4301, and any other public bodies which may be added through amendment to any Contract. Inclusive of DRPT grantees.

**PROPOSAL SUBMISSION:** All proposals must be received by the date and time shown on the cover page of this solicitation at the following address. Any proposals received after the stated time and date will be returned unopened. See Special Terms and Conditions for additional REQUIRED information regarding "Identification of Sealed Proposal". Delivery address: **Division of Purchases and Supply, 1111 East Broad Street, 6<sup>th</sup> Floor, Richmond, Virginia 23219-1199**

**AWARD POSTING:** Upon the award or announcement of a decision to award a contract as a result of this solicitation, the Commonwealth of Virginia, through the Department of General Services, Division of Purchases and Supply, will publicly post such notice online at [www.eva.virginia.gov](http://www.eva.virginia.gov).

**CLARIFICATION OF TERMS:** If any prospective Offeror has questions about the specifications or other solicitation documents, then it is the Offeror's sole responsibility to contact the DPS Statewide Strategic Sourcing Officer whose name appears on the face of this solicitation, **in writing**, no later than five (5) working days before the due date. **Oral requests for information will not be accepted.** No further written inquiries will be accepted after **4:00 P.M. EST** on the 5<sup>th</sup> day. Any revisions to the solicitation will be made only by an addendum issued by the DPS Statewide Strategic Sourcing Officer named above and posted on the state procurement website at [www.eva.virginia.gov](http://www.eva.virginia.gov). Any addenda, notifications, extensions, cancellations or changes will be posted to the state procurement website. No other notification is required. It is the responsibility of the prospective Offeror to obtain all current information from the eVA website.

**PERIOD OF CONTRACT:** One (1) year initial term, with up to four (4) additional one-year renewal options.

The undersigned hereby offers and agrees to furnish all goods and/or services in accordance with the attached signed proposal and the mandatory requirements outlined herein, or as mutually agreed upon through subsequent negotiation.

Company Name: _____	Email: _____
Address: _____	Telephone: _____
City/State/ZIP: _____	Fax: _____
Signature: _____	Cell: _____
Printed Name: _____	eVA Vendor ID Number: _____
Title: _____	DSBSD Number: _____
Date: _____	Vendor SCC ID: _____

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

**RETURN OF THIS PAGE IS REQUIRED**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. PURPOSE.....	2
II. BACKGROUND .....	2
III. OBJECTIVE .....	4
IV. SCHEDULE OFEVENTS.....	5
V. STATEMENT OF NEEDS .....	5
VI. PERFORMANCE MEASUREMENTS.....	12
VII. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS .....	12
VIII. EVALUATION CRITERIA .....	21
IX. REPORTING AND PAYMENT INSTRUCTIONS .....	21
X. GENERAL TERMS AND CONDITIONS .....	22
XI. SPECIAL TERMS AND CONDITIONS .....	31
XII. INVOICES AND METHOD OF PAYMENT .....	39
XIII. PRICING SCHEDULE .....	40
XIV. ATTACHMENTS .....	40
ATTACHMENT A FEDERAL CONDITIONS OF MANUFACTURER/VENDOR CERTIFICATIONS .....	41-65
ATTACHMENT B VENDOR DATA SHEET .....	1
ATTACHMENT C PROPRIETARY INFORMATION IDENTIFICATION .....	1
ATTACHMENT D EXCEPTIONS TO RFP .....	1
ATTACHMENT E VIRGINIA STATE CORPORATION COMMISSION FORM .....	1
ATTACHMENT F SMALL BUSINESS SUBCONTRACTING PLAN .....	1
ATTACHMENT G VOLUME SALES REPORT .....	1
ATTACHMENT H PRICING SCHEDULE .....	1

## I. PURPOSE

The Commonwealth of Virginia (“Commonwealth” or “COVA”), Department of General Services, Division of Purchases and Supply (“DGS” or “DPS”) is issuing this formal request for sealed proposals (“RFP”) for the purpose of establishing one or more Master Agreements (“Contract” or “Master Agreement”) through competitive negotiations with experienced and qualified firms for the provision of quality low floor transit buses.

The Commonwealth of Virginia, Department of General Services, Division of Purchases & Supply (“Commonwealth” or “DGS” or “DPS”) is issuing this request for proposals (“RFP”) for the purpose of soliciting formal sealed proposals in order to establish one or more multi-year term Master Agreements through the use of competitive negotiation with qualified and experienced firms to enable all Commonwealth of Virginia public bodies and other eligible entities, as defined herein, to purchase all categories of quality, low floor transit buses to include all related integral or peripheral component equipment or accessory products associated with such vehicles (collectively referred to as Vehicles or Product or Products); together with available maintenance and technical warranty and maintenance support services (“Services”) necessary to maintain the operational performance, safety and technical integrity of all vehicles in accordance with all original equipment manufacturer (OEM) performance, safety, and technical specifications.

DGS/DPS is issuing this RFP on behalf of and in cooperation with the Virginia Department of Rail and Public Transportation (“DRPT”). All vehicles offered by any prospective contractor must meet the requirements and as delineated herein and the following:

- 1) All DRPT-required specifications and requirements
- 2) U.S. Federal Transit Administration (FTA) current requirements
- 2) American Public Transportation Association (APTA) current *Standard Bus Procurement Guidelines RFP* (2013) as follows:
  - SECTION 6: TECHNICAL SPECIFICATIONS
  - SECTION 7: WARRANTY REQUIREMENTS

(Ref APTA Website)

<http://www.apta.com/resources/standards/Documents/APTA%20Bus%20Procurement%20Guidelines.docx>

Any Master Agreement resulting from this solicitation RFP# E194-193 will be established and managed by DGS/DPS. The term of this Master Agreement will be initially one (1) year with up to four (4) additional one-year renewal options.

Following award, if any, orders will be placed by authorized users with a contractor, in accordance with the ordering instructions in the contract.

## II. BACKGROUND

The Commonwealth of Virginia is the 12<sup>th</sup> most populous state in the nation and home to approximately eight million residents. Virginia is approximately 42,700 square miles, ranked as the

35<sup>th</sup> largest state, and comprised of five distinct regions: Tidewater, Piedmont, Blue Ridge Mountains, Valley and Ridge, and Appalachian Plateau.

Virginia political subdivisions are organized into 95 counties and 38 independent cities which are considered to be county-equivalents.

The mission of Virginia's Department of Rail and Public Transportation (DRPT) is to improve the mobility of people and goods, while expanding transportation choices in the Commonwealth. DRPT envisions that every resident, visitor, and business in Virginia will have access to safe, convenient, and reliable transportation choices.

The products and services any contractor will deliver through this contract will be required to assist DRPT in fulfilling this mission; however, DRPT anticipates that there are several significant factors that will affect Virginia's future transportation needs and its customer base.

1. Population: DRPT expects Virginia's population to grow by about one-third to approximately 10.9 million people by 2035, and almost 2 million of those residents will be 65 years of age or older. The resulting increase in travel needs will create much greater demand for public transportation services and human service transportation services throughout all areas of Virginia.
2. Demographics: Virginia's population demographics are changing. There is a growing number of elderly and disabled that comprises a larger proportion of the overall population. There is also an increasing influx of new residents and new businesses in the state. These changes require greater awareness efforts in promoting the use of public transportation, and the transportation choices that must be considered.
3. Business Growth: A growing number of businesses are being brought into Virginia, as well, or that are starting up. This also increases the numbers of citizens in the workforce that need public transportation. This growing workforce will look for more transportation choices as more than 60 percent of transit trips are taken for work purposes.
4. Counties and Cities – DRPT has determined that the number of counties and cities that operate or sponsor public transportation and commuter assistance services will need to grow to meet the increasing mobility needs of a public that does not currently have access to public transportation services.
5. Public Transportation Systems – The number of public transportation systems will continue to increase as this demand for transit service increases. Virginia will need to increase its share of investment in public transportation to provide Virginia's residents with additional mobility options.

Other factors affecting Virginia transportation needs will include a greater demand for human transportation service agencies, as well as commuter assistance agencies.

Additional information is found on DRPT's website at <http://www.drpt.virginia.gov/> with additional information at <http://vaperforms.virginia.gov> under Virginia's transportation goals

Offerors should note that pursuant to *Code of Virginia* § 2.2-1120, all private institutions of higher education chartered in Virginia and granted tax-exempt status under the *Internal Revenue Code* section § 501(c)(3) and DRPT and/or Federal Transit Administration grant fund recipients may

submit orders to purchase products or services directly from any Contract established as a result of this RFP.

Virginia has received considerable recognition as one of the best managed states in the nation, and is evidenced by its long standing AAA bond rating. According to Virginia Performs, much credit is due to the roll of the state and the enterprise level performance management, accountability, and transparency that is exercised by Virginia state government to ensure the best use of public resources and to oversee the major administrative functions of state government, which includes the procurement of all needed goods and services.

For FY14, total expenditures for the Commonwealth's state government exceeded \$43 billion, with over \$6.3 billion processed through Virginia's eProcurement system, known as "eVA", for all categories of required goods and services.

### III. OBJECTIVE

The objective of this Request for Proposal (RFP) is to develop one or more contracts from qualified suppliers that will satisfy the Commonwealth's requirements for public transparency; provide online tools for citizens to understand what government is doing and spending; meet the Commonwealth's intent to obtain high quality goods and services at reasonable cost; ensure ongoing innovation in the products obtained; provide overall best value, and; achieve the most favorable pricing and services possibly available for these Products that may be sought by any potential authorized user in the Commonwealth.

Through this process, it is contemplated that a prospective contractor will be able to obtain greater savings or reduced costs by managing one comprehensive cooperative contract for the state, and that the collective volume of cooperative purchases that this represents, through a state cooperative contract, rather than needing to respond to (and manage) numerous, individual, duplicative contracts with diverse Virginia public bodies, agencies, and educational institutions, and should result in better discounts for the Virginia public body marketplace. Therefore, no Offeror should expect that any proposal will be fully considered for a potential contract award unless the pricing structure and overall value offered through this RFP process is far more aggressive than any current or potential pricing structure and overall value provided to any other public or private entity, either individually or cooperatively.

It is also contemplated that the establishment of one or more contracts from this RFP, and an understanding of any subcontracting opportunities offered from any prime contractor, will help enable the Commonwealth to meet its initiatives with regards to small business and related programs designed to assist small businesses in Virginia.

Any resulting Master Agreement will be mandatory use with purchase orders submitted by Commonwealth of Virginia agencies, institutions of higher education, and other public bodies and entities authorized to use the Master Agreement by *Code of Virginia* §2.2-4301 and §2.2-4304, and includes private institutions of higher education chartered in Virginia as defined in *Code of Virginia* §2.2-1120 and granted tax-exempt status under *Internal Revenue Code* §501(c) (3) and *DRPT and/or FTA grant fund recipients*. All entities described above are collectively referred to as "Authorized Users."

This solicitation incorporates where appropriate all provisions of the Americans with Disabilities Act (ADA) Final Rule as stated in the Federal Register Vol. 56. No. 173 of September 6, 1991, Subpart B-Buses, Vans and Systems, pages 45756 through 45761.

#### **IV. SCHEDULE OF EVENTS**

The planned schedule of events for this solicitation is as follows:

Solicitation Release:	5/31/16
Question/Answer Deadline:	7/25/16
Proposals Due / Closing Date:	8/15/16 at 1:00pm
Anticipated Contract Award Date:	9/15/16

The above schedule is for planning purposes only and may be changed at the sole discretion of the Commonwealth at any time. In the event this schedule changes, the Commonwealth may post a public notice of such a change on the Commonwealth's "eVA: e-Procurement website.

#### **V. STATEMENT OF NEEDS**

The Commonwealth requires Low Floor Transit Bus contracts to address, consolidate and support needs at all levels, including state, local, and higher education. This contract will provide for all categories to include, but not be limited to, 2016, new or current model year, 30 40 45 & 60 ft. low floor transit buses.

Through this RFP, the Commonwealth seeks to leverage the volume of these vehicles and additional options purchased throughout the Commonwealth to secure the best possible competitive pricing structure and optimized business processes that may be available to other public bodies based on the economies of scale involved and the aggregate market volume this represents. In addition, this is to include all local government and K-12 needs as well as all 501(c)(3) private institutions of higher education chartered in Virginia *and DRPT and/or FTA grant fund recipients.*

The Commonwealth reserves the right to make awards for any goods and/or services depending upon the capabilities and benefits described in any Offeror's proposal and as the Commonwealth deems in its best interest. Such decision shall be based upon the Commonwealth's sole and exclusive judgment.

No Offeror, therefore, should expect that any proposal they offer be fully considered for any potential contract award unless the pricing structure and overall value offered through this RFP process is far more aggressive than what they might currently or potentially provide to any other public or private entity, either individually or cooperatively.

As it is within the Commonwealth's discretion to enter into negotiations with only a limited number of Offerors, any proposal submitted should:

- a) be fully complete,
- b) be comprised of leading edge business processes and practices,
- c) be demonstrably more effective and efficient than any current statewide processes, and

d) consist of extremely aggressive pricing.

#### A. General Requirements

The Commonwealth seeks Offerors to provide proposals that address the need for a multiple capacity low floor transit bus contracts which all public bodies can order from, in a manner that minimally addresses the following requirements:

1. Strategic Intent: Our strategic intent through this RFP is to meet the overall requirements of the Commonwealth, the mission and goals of DRPT, and those of all Virginia public bodies that acquire these categories of Products. Based on this intent, DGS seeks to establish an enterprise-wide master ordering agreement through which all authorized users may acquire these Products, and ensure overall efficiency and effectiveness, transparency in public procurement, as well as optimized costs, delivery, quality, safety, and all other factors, by combining all statewide demand and volume for these Products in the acquisition process.
2. Geographic Scope: Awarded vendors may provide Products under this contract to any public entity in the Commonwealth or Authorized User as described herein. Vendors with any geographic restrictions should specify the geographic areas that they are not able to provide Products and/or Services. Regardless of any contracted service areas, and to any extent that they may overlap, Authorized Users shall have the opportunity to use any contract, based on their own business discretion and/or operational needs.
3. Objectives: Products and/or Services should minimally meet all specific objectives and requirements delineated herein under Statement of Needs, and all stipulated or referenced contract requirements, provisions, and attachments.
4. Products (and/or Services): Any contractor should be able to offer the broadest possible spectrum of all Vehicle categories sought. The Commonwealth recognizes that potential suppliers may not carry all or exactly the same range of Products or lines. However, all Products and Product lines either carried in the Contractor's available inventory, catalog(s), or price list(s), or special order(s) should be covered by their proposal.
5. Minimum Qualifications: Sealed proposals will be received and considered from offerors with the qualifications listed below. Proposals that do not meet these qualifications may not be considered.
  - a. Offeror must have a full time operation with sales and service staff
  - b. Offeror must be an authorized dealer for the vehicle and options proposed
6. Specifications:  
The Contractor shall furnish and deliver vehicle(s) and additional options in accordance with the U.S. Federal Transportation Administration (FTA) and American Public Transportation Association (APTA) specifications, floor plans, etc. submitted with their proposals which are intended to define the minimum level of quality and performance.

To be considered for an award under this RFP, Offerors proposed vehicle(s) should be:

- a. for a standard base-model transit bus plus
- b. and additional options

(List all on Attachment H, Pricing Schedule)

7. E-Procurement:  
The Contractor must be registered in eVA, the Commonwealth's electronic procurement system. The Contractor shall accept orders placed by ordering agencies through the eVA system. The Contractor shall offer a detailed electronic line-item catalog or index page catalog for any/all items awarded, including any add-on, options, or other features, functions, accessories that would enable an Authorized User to build a completely personalized base vehicle and selected additional options. Failure to provide such a detailed electronic catalog may be cause for the Commonwealth to reject the offer or terminate a resulting contract for default. The format of this electronic catalog shall conform to the eVA Catalog Specifications that can be downloaded at [www.eva.virginia.gov](http://www.eva.virginia.gov).
8. Anticipated Usage – Next 5 Years:  
It is estimated that the Commonwealth of Virginia, Authorized Users, may purchase Low Floor Transit Busses in the quantities indicated below over the next five years. This is an estimate only and not a guarantee in any way of the quantity to be purchased from the resulting contract(s).

<u>Size Bus</u>	<u>Estimated Purchase Qty (each)</u>
30 FT	80
35 FT	75
40 FT	90
60 FT	10

## B. Specific Requirements

1. Latest Current Model and Configuration: This solicitation is for 2016, or current model year, new, vehicles.
2. Vehicle Options: Additional vehicle options are included in Attachment I, and the Offeror is expected to complete the attachments in their entirety for the vehicles being offered.
3. Maintenance Manuals:  
Contractor must provide with each piece of equipment an electronic or hard copy operations and maintenance manual with wiring diagrams, parts list, etc. Parts manuals, service manuals, operator's manuals, and/or other materials/literature needed to satisfy these requirements shall be furnished at no additional cost. These documents should be submitted to the Authorized User on or before delivery of vehicle.
4. Delivery / Delivery Charges:  
The Vendor shall provide delivery for the product(s) purchased in accordance with the following:
- Distance: shall be calculated by the number of actual miles from the vendor's physical address to the delivery point specified by the ordering entity. Mileage shall be determined using Google maps at <https://www.maps.google.com> with the results rounded up to the next whole mile.
  - Included miles: Distance equal to or less than 50 miles (and all direct deliveries) to DRPT's office at 600 East Main Street, Richmond, VA 23219. Vehicle(s) shall be delivered FOB Destination, freight included. No extra charges are permitted.

- c. **Additional Mileage:** Distance equal to or greater than 51 miles: the vendor may add an additional delivery charge of no more than \$1.80 per mile of the difference between the actual total distance minus 50 miles. (Example: Actual total distance = 150 miles, minus 50 included miles, equals 100 miles in which an additional delivery charge per mile could be charged.  $100 \times \$1.80 = \$180$ ).
  - d. **Single purchase orders for multiple vehicles:** Vendor should offer a reduced delivery rate for multiple vehicles ordered on any single purchase order. The regular rate provided must be equal to or less than \$1.80 per mile applicable to the first vehicle and any reduced rates should apply to subsequent vehicles on the same purchase order. Partial shipments of any single order made at the option of the Vendor shall not change delivery charges.
5. **Delivery Lead Time:** Offeror shall indicate the delivery time after receipt of order. (Example: 12-18 months ARO).
6. **Acceptance:** Products shall be deemed accepted by the Authorized User after ensuring all products meet the required performance levels ("Acceptance"). The Authorized User is required to accept or reject the vehicle(s) within 24 hours of delivery. If the Authorized User has not provided written acceptance or rejection within 24 hours, the vehicles will be deemed accepted and the warranty period will commence at the end of the 24 hour period.
7. **Inspection / Latent Defects:** All products are subject to inspection and testing by the ordering Authorized User. Products that do not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when Products are used after acceptance has occurred. If latent defects are found at any time during the term of this Contract, the Contractor shall repair or replace the defective Products. This remedy shall be in addition to any other remedies or obligations under this Contract or provided by law.
8. **Substitutions:**  
Substitution of a product, brand or manufacturer is expressly prohibited unless approved in writing by the DGS/DPS Statewide Strategic Sourcing Officer.
9. **Warranty:**  
All products purchased under this contract will minimally include the most favorable Original Equipment Manufacturer's warranty which will pass directly to the Commonwealth. Products which fail after acceptance and installation will be covered under warranty. Products which are inoperative at installation will either be replaced by the Contractor or repaired under warranty. The decision to replace such products or accept warranty repair will be at the sole discretion of the Commonwealth, except in the event that the Commonwealth fails to provide timely notice of product failure to the Contractor. The Contractor should provide a toll-free number for requests for warranty services for all equipment sold under the contract. Any maintenance agreements available from the Contractor should be provided to the Commonwealth as an option and priced as discounted off list price. Warranty shall commence upon the date of acceptance unless the vehicle is deemed not acceptable, in writing, to the Contractor within 24 hours of delivery. If the Authorized User has not provided written acceptance

or rejection within 24 hours, the warranty period will commence at the end of the 24 hour period.

Offerors are encouraged to offer the most favorable warranty available, such as 5 year/100,000 miles – whichever occurs last. Extended warranty options should be offered.

10. Product Additions:  
In the event that the Contractor wishes to add additional options to the contract, the Contractor shall submit such request to Department of General Services – Division of Purchases and Supply, Dennis Donahue for review at [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov). Additional options are not authorized until approval is received from DGS/DPS, in writing, and have been added to the contract document.
11. Product Satisfaction:  
The Contractor should act as a customer advocate and coordinator for communication with the manufacturers and is responsible for performance and problem resolution. The Contractor's responsibility for support continues even if the Contractor discontinues selling a manufacturer's product to the extent that resolution is available from the manufacturer. The contractor must take the necessary actions with manufacturers to reduce, minimize and prevent stock-outs of products and to ensure that promised lead times are accurate. Customer satisfaction will be a determining factor in measuring the Contractor's performance. The Contractor will be expected to routinely monitor customer satisfaction and regularly report all feedback in a format acceptable to the Commonwealth.
12. Performance Reports:  
Contractor shall provide periodic performance reports as outlined in Section IX, "Reporting and Payment Instructions". All performance reports shall be provided to the Contract Administrator. Reports shall be provided at no additional cost to the Commonwealth and may be requested in either electronic or hard copy.
13. Sales and Support Service:  
The Commonwealth anticipates that this will be a high volume usage contract. The Contractor shall have a full time sales representative assigned to the Commonwealth to make regular calls to assist users, resolve problems, assist in cross-referencing products, facilitate the returned goods process, e-procurement concerns and other matters. The Contractor shall apprise the Commonwealth of any quality issues including recalls, upgrades, and product warnings that may affect product performance and safety. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of orders, delivery information, back-order information, statewide contract pricing, contracted product offerings and general product information. Representatives should be available by phone, fax or email, and this contact information shall be provided to the Commonwealth and any ordering Agencies.
14. Technical Service Support:  
The Offeror shall furnish technical assistance, including installation and demonstration of operating procedures, when appropriate, for new equipment purchased under this contract. The Contractor shall provide technical service on technical applications; furnish parts, operating manuals and schematic design, when available, for all equipment. The

Contractor is responsible for ensuring repair facilities have sufficient spare parts and labor to support all stated manufacturer's equipment sold to the Commonwealth. As an authorized distributor, the Contractor shall guarantee and extend all manufacturers and/or dealer guarantees. Contractor should be able to track service requests and repair an item after repeated attempts, or equipment is deemed unreliable due to excessive downtime, the Contractor should replace or accept return and provide full credit for the equipment.

15. Sustainability:  
The Offeror is encouraged to address environmental concerns related to the purchase of recycled products, reductions of operating and maintenance costs, improved energy efficiencies, reduction of waste, use of 'green' products, and efforts to reduce consumption of energy, water and materials. The Contractor shall ensure that any equipment removed on behalf of the contract user is disposed of properly and in strict compliance with any regulations that would apply to the specific equipment. The contractor shall provide written notice of compliance of proper disposal if requested.
16. Training:  
The Contractor shall include a proposed training plan for new equipment operation to include, but not be limited to, the Contractor's role in training, how training by a third party may occur, and how dialogue between the contract user and trainer may occur. For equipment and furniture orders, Contractor representatives must advise the ordering agency what installation, training and support are included in the purchase price (telephone, on-site, on-line, etc) and what additional training and/or support are available at an additional charge, and what the charge will be.
17. Minimum Order:  
The minimum order is one (1) vehicle per single Purchase Order.
18. Offeror Pricing:  
Offeror shall complete and submit Attachment H, Pricing Schedule
19. Delivery Notification: The vendor shall provide Authorized Users/Ordering Entity staff forty-five (45) days' notice prior to delivery to inspect the vehicles. The vehicle shall be in acceptable condition upon delivery and will be accepted only by an authorized person designated by the agency. Delivery shall be made during normal business hours (Monday through Friday 8am to 5pm), unless specified otherwise. Vendor shall use the contact information listed on the eVA purchase order unless stated otherwise.
20. Dealer Preparation: Prior to delivery the vendor must perform new vehicle service preparation in accordance with manufacturer specifications. Vehicles must be delivered clean and complete and ready for service including a current Virginia State Inspection. Each vehicle must be delivered with half (1/2) a tank of gas. Vehicles delivered without proper dealer preparation may be rejected and vendor shall pickup the vehicle, service it properly and re-deliver to Authorized User.
21. Temporary License: A 30-day license tag shall be furnished with each vehicle delivered.
22. Title Papers: All papers for titling purposes shall be delivered with the vehicle. These papers include New Vehicle Warranty Information, New Vehicle Standard Owner's Manual, Manufacturer's Statement of Origin (MSO), Delayed Warranty Start Form,

Emissions Certifications stating the vehicles meets U.S. Government Standards for sale in the Commonwealth of Virginia, and any other such documents necessary for delivery.

23. International Organization for Standardization (ISO) 9001:2008: Offeror shall submit an ISO 9001:2008 supplier's certification for the bus body manufacturer with their proposal. Proposals received without certification may be deemed incomplete and scored lower. ISO 9001:2008 has been implemented to ensure suppliers conform to strict standards regarding the manufacturer's Quality Management System. The manufacturer's ISO 9001:2008 certification ensures compliance with the customer's quality requirements and applicable regulatory requirements while enhancing customer satisfaction and achieving continual improvement of its performance in pursuit of these objectives.
24. Bus Testing: The bus offered must have completed testing at The Federal Bus Testing Facility in Altoona, PA in the five year / 150,000 mile category. Proof of completed test shall be submitted with proposal. Please provide web-link to testing results for each vehicle being offered if available in lieu of printed test report.
25. Maintenance Provisions: A description of how and by whom warranty service can be provided must be included in proposal. The vendor shall be responsible for all warranties associated with the vehicle. The vendor shall act as the first source for performing warranty work. This must cover both mechanical and body work. The manufacturer's warranty covering parts, materials and workmanship shall apply for a minimum period of 12 months or 12,000 miles, whichever occurs last, and this warranty shall include repair and replacement of defective parts and labor. The structural body warranty to be a minimum of five (5) years or 100,000 miles, whichever occurs last. The successful vendor shall be required to offer a toll free number to all recipients for warranty inquiries, parts orders and service related questions. The vendor shall have personnel available to answer warranty, parts and service inquiries Monday through Friday 8am to 5pm, except during holidays recognized by the Commonwealth of Virginia.

The vendor shall respond to warranty, parts and service inquiries and offer a reasonable initial plan to address such inquiries within 24 hours of call receipt or the next business day, whichever is later, via phone or email.

All offerors must provide proof of both chassis and body warranty (including bus body, air conditioning and wheelchair ramp) service points within the Commonwealth of Virginia. All offerors are encouraged to submit documentation providing the names of the service point vendors. Vendor(s) awarded a contract shall be required to maintain service facilities in Central / Southwest / Tidewater and Northern Virginia.

The vehicle to be furnished shall conform to all applicable FMVSS and all equipment shall conform to Title 46.1, Chapter 4, and Article 9 of the Code of Virginia and shall include a valid State Inspection Sticker. Chassis to be a standard proven model of manufacturer's latest current production and include all standard equipment as advertised with additional optional equipment as outlined above. All components, unless otherwise required by these specifications, shall be the standard or optional equipment specifically advertised and installed by the manufacturer including any additional warranties.

26. Dealer Requirements: All offerors are required to be licensed by the Virginia Motor Vehicle Dealers Board as established in Section 46.2 of the Code of Virginia. Requirements include but are not limited to a minimum of 250 square feet of office space in a permanent enclosed building, not used as a residence, devoted exclusively to the dealership. Dealership must also include contiguous space designated for the exclusive use of the dealer adequate to display at least 10 vehicles. The facility must include a desk, chairs, filing space, a working telephone listed in the name of the dealership and working utilities. Dealers shall include a copy of certification with their proposal.
27. Manufacturer Requirements: The manufacturer's liability insurance plan must be submitted with proposal.
28. Federal Conditions of Manufacturer/Vendor: It shall be understood that all proposed offers comply with Attachment A herein - Federal Conditions of Manufacturer/Vendor.
29. Contractor Generated Order Confirmation: Contractor shall send the ordering agency an electronic/written confirmation of receipt of the purchase order to include confirmation of the options, color choices, etc being placed. eVA's automated email confirmation functionality may not be used to confirm orders. This applies to all orders issued against this contract. This information must be completed within five (5) business days after receipt of the order and must indicate the date the order was placed with the manufacturer. Confirmation emails should be sent to the "ordering person" listed on the eVA purchase order.

## VI. PERFORMANCE MEASUREMENTS

The Commonwealth of Virginia will issue Customer Satisfaction Surveys annually verifying the Contractor's compliance with the Master Agreement and may include the following performance measurements:

1. Order accuracy
2. Order delivery and timeliness
3. Quality of warranty work
4. Quality of equipment repairs and timeliness

The Commonwealth of Virginia will review the results of the surveys and if needed, address any concerns with the Contractor and establish a plan to correct any deficiencies.

## VII. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

***Note: In efforts to reduce paper in your proposal response, please do not send hardcopy of U.S. Federal Transit Authority (FTA) or American Public Transportation Association (APTA) requirements, specifications, forms, compliances - unless indicated to do so herein.***

***In lieu of hardcopy, include such data in a Microsoft Word 2007 format with your proposal on a CD or flash drive only.***

### A. Proposal Requirements

In order to be considered for selection, Offerors should submit a complete response to this RFP to the address on the Cover Page and organized as described below. Proposals will not be accepted by facsimile transmission or by electronic mail. Offeror's name, RFP number and title must be prominently displayed on the front of each proposal.

- a. One (1) original hardcopy proposal (clearly marked "Original")
- b. One (1) hard copy (clearly marked "Copy")
- c. One (1) electronic copy in Microsoft Word 2007 format on a CD or flash drive
- d. One (1) hard copy redacted copy, if applicable, (marked "Redacted Copy") from which trade secret or proprietary material has been obscured or redacted. The redacted version must have all trade secret or proprietary material obscured that is stated herein on the Proprietary Information Identification form in Attachment C
- e. One (1) electronic redacted copy in Microsoft Word 2007 format on a CD or flash drive, if applicable.

The Offeror shall make no other distribution of the proposal.

It is the Offeror's sole responsibility to assure that proposal packages are received by the time, date and appropriate location as indicated on the Cover Page. Proposals submitted elsewhere, including to other state or federal agencies, will not be accepted. Late proposals will not be accepted or considered.

If discrepancies are found between the copies or between the original and copies, the original proposal will provide the basis of resolving discrepancies. If no document can be identified as an original, the Offeror's proposal may be rejected at the discretion of the Commonwealth.

#### 1. Proposal Preparation

*(Send proposal responses on hardcopy for this section – will be included in the 50 typed page limit as noted below)*

An authorized representative of the Offeror must sign any submitted proposal. All required information should be submitted. If an Offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after the receipt of proposal. **Failure to submit all required information may result in a lowered evaluation score of the proposal.** Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. The Offeror is responsible for all costs of proposal preparation. The Commonwealth of Virginia is not liable for any costs incurred in preparing a response to the RFP. Emphasis should be placed on completeness and clarity of content.

Proposals should be organized in the order in which the requirements are presented in the RFP. The proposal should contain a table of contents which cross-references the RFP requirements.

Other proposal format requirements include:

- a. The entire proposal response shall be **limited to 50 typed pages** – including vendor's preprinted cut sheets, specification, floor plans etc.

The RFP signature on this RFP cover page, must be included in the ORIGINAL proposal and the ELECTRONIC copy of the proposal. Additional copies must include the signed cover page, but need not include the remainder of this RFP.

See Item B below: "Specific Proposal Submission Instructions" for submittal requirements.

- b. No font smaller than 12 point.
- c. 8½ x 11 inch page size (larger pages are allowed for figures or tables, but they should be folded into the overall proposal and used sparingly.)
- d. All pages should be numbered.
- e. Organize using tab dividers and in the order described in Section VII.B
- f. Reference the paragraph number of the corresponding section of the RFP and cite the paragraph number, sub letter and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page

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

## 2. Proprietary Information (*Attachment C*)

*Send proposal responses on hardcopy for this section – will be included in the 50 typed page limit)*

All executables, user data, materials, meeting minutes, progress reports and documentation shall be submitted to DPS and shall belong exclusively to DPS, and shall be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act* provided the Offeror invokes the protections of Section 2.2-4342F of the *Virginia Public Procurement Act* which provides that:

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

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

## 3. Oral Presentation

Offerors who submit proposals in response to this RFP may be required to present an oral presentation of their proposal to the Proposal Evaluation Team. An oral presentation may provide an opportunity for the Offeror to clarify or elaborate on their proposal submittal. If

held, DPS will schedule the time and location of these presentations. If the Offeror is selected to give an oral presentation, such Offeror may be requested to provide additional copies of their proposal at that time.

Oral presentations are an option of the Proposal Evaluation Team and may or may not, be conducted. Therefore, proposals must be complete.

4. As used in this RFP, the terms “must”, “shall”, “should” and “may” identify the criticality of requirements. “Must” and “shall” identify requirements that are mandatory and are required by law or regulation. The inability of an offeror to satisfy a “must” or “shall” requirement may seriously affect the overall rating score of the proposal. The terms “should” or “may” indicate highly desirable requests.
5. Offeror Exceptions to Terms and Conditions: The Commonwealth discourages exceptions to terms and conditions and may make a decision on the selection of the offerors for evaluation based on the initial proposals without clarification or an opportunity for discussion; therefore, the nature of the exceptions would be evaluated to determine the extent to which the alternative language or approach poses unreasonable additional risk to the Commonwealth, is judged to inhibit achieving the objectives of the RFP, whose ambiguity makes evaluation difficult and a fair resolution impractical given the timeframe for the RFP, or the exception or correction of what is deemed to be a deficiency or unacceptable exception would require a substantial proposal rewrite to correct.

Offeror should identify and seek to clarify any concerns with RFP language or any other document contained within this RFP through their written inquiries using the process described in Section 6 below.

6. Questions and RFP Amendments:
  - a. Questions: Offeror shall be fully responsible for understanding the Statement of Needs, terms and conditions, and all other aspects of the RFP, and other factors affecting contract performance before submitting a proposal. It shall be the Offeror’s sole responsibility to inquire and obtain clarification if the Offeror does not fully understand the entire RFP requirements. The Commonwealth’s verbal responses to questions are not binding; therefore, no questions will be answered by phone. Questions regarding the solicitation must be submitted in writing to Dennis Donahue via e-mail at [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov) no later than 4:00 pm eastern time on June 17, 2016. Identify the question by noting the solicitation number in the subject line of the email or fax. Official answers to all written questions will be posted in eVA’s Virginia Business Opportunities (VBO). The identity of potential offerors will not be published with the answers; however, the text of questions may be restated and offeror should not include language in questions that may reveal their firm’s identify.
  - b. RFP Amendments: Formal changes to the RFP, including but not limited to contractual terms and procurement requirements, will only be changed by formal written amendments issued by the Commonwealth. The Commonwealth shall accept no responsibility for an offeror not receiving the solicitation, amendments and/or other solicitation documents. Offeror shall be solely responsible for regularly checking the status of the solicitation in eVA’s Virginia Business Opportunities (VBO) for any updates, changes, amendments or other information pertaining to the RFP.

7. Proposal Submission for Sealed Request for Proposal: Offeror shall return the signed proposal in a sealed envelope and addressed as follows:

Vendor Name	Postage
Street or Box Number	
City, State, Zip Code	
DGS/Division of Purchases and Supply *See below for Specific Address Instructions*	
RFP#:	E194-193
Due Date:	8/1/16
Time:	1:00 p.m. EDT
Title: RFP Title:	<b>Low Floor Transit Buses</b>

Specific Address Instructions:

- a. For All Proposals: Offeror must ensure the information below is clearly visible on the outside of the envelope.
- i. Name of Offeror
  - ii. DGS/DPS 6<sup>th</sup> floor, Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219
  - iii. Solicitation Due Date and Time, Solicitation Number, Solicitation Title

If a proposal response is not contained in an envelope and addressed as described above, the offeror risks that the envelope may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other unrequested correspondence or other proposals should be placed in the envelope. The Commonwealth shall not be responsible if the proposal response is not delivered to Bid Receiving by the due date and time.

Amendments to the RFP may be issued by the Commonwealth and offeror acknowledgments of amendments must be received at Bid Receiving either prior to the proposal due date and time or attached to the offeror's proposal. Before submitting the proposal, offeror should check the eVA website to confirm if any amendments have been issued.

- b. Express Delivery Service: Send the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6<sup>th</sup> floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror is cautioned to not rely on the dependability of Next Day/Overnight Delivery Service. Late proposals will not be accepted or considered.
- c. U.S. Postal Service: Mail the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6<sup>th</sup> floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for the proposal response to be processed through the Commonwealth's Mail Security Processing System prior to delivery to Bid Receiving. Late proposals will not be accepted or considered. \*If using the mailing option, allow for at least five (5) business days for delivery due to USPS and DGS mail handling processes.\*
- d. Hand-Delivered Proposals: Deliver the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6<sup>th</sup> floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must

allow ample time for parking, walking to the building, security clearance procedures inside the building (current and valid picture ID required) and submitting the proposal to the receptionist on the 6<sup>th</sup> floor. Late proposals will not be accepted or considered.

**B. Specific Proposal Submission Instructions**

*(Send proposal responses on hardcopy for all "TABS" below - will be included in the 50 typed page limit)*

Proposals should be as thorough and detailed as possible so that the Proposal Evaluation Team can properly evaluate the Offeror's capabilities to provide the required goods and/or services. Offerors are strongly advised to provide a model for the Commonwealth's evaluation purposes that represents their solution to all requirements depicted in the RFP, and which is complete, comprehensive, simple and easy to understand. The Commonwealth reserves the right to request additional information and/or documentation at any time during the proposal evaluation process. Offerors are required to submit the following items, separated by tabs within the proposal and in sequential order corresponding to the related sections of this RFP:

**TAB 1: RFP, Addenda and Completed Attachments**

*(Send proposal responses for this section on hardcopy for all TABS 1 through 8)*

- a. The RFP signature page filled out as required.
- b. Include an original signed copy of any future addenda to this RFP that may be issued.
- c. The following RFP Attachments, filled out and completed in their entirety:
  - Attachment A – Federal Conditions of Manufacturer/Vendor & Certification
  - Attachment B – Vendor Data Sheet
  - Attachment C – Proprietary Information Identification Form
  - Attachment D – Exceptions to the RFP
  - Attachment E – State Corporation Commission Form
  - Attachment F – Small Business Subcontracting Plan
  - Attachment G – Volume Sales Report
  - Attachment H – Pricing Schedule

**TAB 2: Executive Summary**

Offeror should provide a two (2) page Executive Summary which should include:

- a. RFP title, number and issue date
- b. Firm's legal name and address
- c. Name, address, telephone number and email address of the person(s) authorized to act on behalf of the Offeror
- d. Name, address, telephone number and email address of the person(s) responsible for providing the mandatory reports described in Section IX
- e. Name, address, telephone number, email address and qualifications of the person (point of contact) managing the account
- f. Brief description of the following:
  - i. Reasons contracting with the Offeror's firm to provide products and/or services would be in the best interest of the Commonwealth
  - ii. Highlights of the major features of the proposal
  - iii. Requirements that cannot be met by the Offeror

**TAB 3: Pricing Schedule**

The Commonwealth's intent is to develop a pricing schedule under any Master Agreement that is complete, comprehensive, easy to use, efficient to administer for all parties and capable of being readily reconciled to any invoice that may be submitted by any contractor the any Authorized User.

Offeror must complete the following attachments in their entirety:

- a. Attachment H: Pricing Schedule including quantity discounts

\*When determining the discount percentage being offered, the Offeror should take into consideration any and all costs associated with providing and delivering the products and/or services, including but not limited to the following: freight/transportation/shipping costs to the ordering entity, installation, labor, pre-delivery servicing and dealer prep, and associated eVA fees.

**TAB 4: Methodology – Plans for Providing Products and/or Services**

Offerors shall submit a comprehensive proposal that convincingly and realistically depicts all of their capabilities, qualifications, resources, plans, and processes, which can successfully enable the fulfillment all of requirements depicted in Section V, entitled "Statement of Needs."

At a minimum, an Offeror should address in separate and distinct sections, each of the following topics to describe the company's approach for providing the goods and/or services and each of the requirements, in addition to specifically addressing the following:

1. Delivery Lead Time - Offeror shall provide a delivery lead time, after receipt of order (ARO).
2. Describe your plan and process to provide the products and/or services starting with the initial inquiry from an Authorized User (i.e. consultation with agency staff to determine the best vehicle configuration for their need, vehicle demonstration, etc) through the delivery of the vehicle.
3. Describe detailed plans for providing goods and services on statewide basis. Discuss service levels by region, product breadth, ability to serve all agencies and localities throughout the Commonwealth.
4. Policies - Include ordering instructions, credit card acceptance policy, return procedures, installation, training, maintenance and/or extended warranty information.
5. eCommerce - Describe your commitment to e-commerce. Provide plans for maintaining the required punch-out catalog, managing electronic orders, new and/or existing users and user data.
6. Cost Control - Discuss your plan for price firmness, conveying changes and notification of product additions, deletions or changes.

7. Marketing - Describe initial and ongoing communication plans and methods your firm would employ in order to educate and train staff in regards to equipment purchases as well as problem solving and problem prevention issues with any purchases.
8. Describe the training (i.e. operator and maintenance) and technical support (i.e. phone support, online support, etc.) provided.
9. Timeline - Provide proposed schedule for implementation of your firm's ability to begin providing Products and Services should it receive a contract award and describe when your firm can begin servicing accounts, expressed as a number of days following any possible notice of contract award.
10. Product Changes - Describe communication plans for product recalls, recall procedures, equipment changes and upgrades, notifications of additions/deletions and field engineering modifications. During recalls, describe proactive steps your company will take to alleviate downtime of current vehicles in operations.
11. Marketing – Describe initial and ongoing communication plans and marketing methods your firm would employ to reach potential Authorized Users to train and educate them on Products, and initiate and maximize usage of this contract and proposed Products.
12. Locations – Provide a listing of all service locations and facilities.

**TAB 5: Qualifications and Experience of Offerors**

Describe your firm's background, experience, and qualification related to this type of project that should include, but not be limited to, the following:

**1. Organizational Structure**

- a. Provide a detailed written narrative statement of the firm's organizational structure and history, locations, including the principals and their background.
- b. Include the mission statement and/or company goals
- c. If the company is a wholly-owned subsidiary of a 'parent' company, then it must provide all information required on both firms.
- c. Include the legal name and address and the legal form of company (partnership, corporation, joint venture, etc.)
- d. If proposing in a joint venture, then identify all members of the joint venture and provide all information required within this section for each member of the venture.
- e. In all cases, provide addresses of affiliates, subsidiaries or satellite service locations that will be used to support this project.
- f. Days and hours of operation

- g. Total number of sales and service personnel employed by your firm by location
- h. Describe the firms growth over the past three (3) years
- i. Describe the invoicing process and the methods of accepted payment
- j. Describe the measures used to protect sensitive customer information

**2. Demonstrated Knowledge and Experience**

- a. Provide a detailed narrative describing the firm's qualifications and background in providing these types of goods and services.
- b. Describe previous similar work with public or private procurement entities.
- c. Provide a government client list and discounts provided over the past three (3) years.
- c. Describe your firm's experience implementing and maintaining a similar solution and providing these goods and services described herein for other identified clients of comparable size or larger.

**3. Litigation**

Disclose any information about pending legal proceedings or business litigation against your firm, any officer, or principal. If necessary, provide an explanation and indicate the current status or disposition, not to exceed two (2) pages.

**4. Debarment**

Provide a statement verifying that neither the Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or involuntarily excluded from participation in this procurement. If the offeror cannot make this statement, disclose and provide information not to exceed two (2) pages.

**TAB 6: Quality / Customer Service / Customer Support**

- 1. Discuss product breadth, variety and quality of products offered.
- 2. Describe procedures and systems that support e-procurement, customer order-entry and data.
- 3. Roles and Responsibilities – Identify by name, title and location the individual(s) who will be responsible for implementing services and overall management of any possible contract. Identify and describe the role of any other individuals involved; the individual who will be the primary day-to-day contact for the Commonwealth, with resumes for key personnel.
- 4. Discuss plans for problem solving, response time to customer service/support issues or complaints, and methodology for resolutions.

**TAB 7: Additional Information**

Provide any information not requested in this RFP that would bring value added elements to a Master Agreement with the Commonwealth. Examples are: products or services, enhancements, etc that were successful with other clients that may benefit the Commonwealth.

Provide any cost savings programs, rebates, incentives or discounts that are offered above and beyond the discounts in the pricing schedule.

Offerors are strongly encouraged to propose additional vehicles that meet and/or exceed the specifications.

**TAB 8: Appendices, Data and Other Submissions**

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

**VIII. EVALUATION CRITERIA**

The Proposal Evaluation Team will review all proposals received by the proposal submission deadline. Proposals must be complete and responsive to all sections of the RFP. Proposals that do not fulfill all program requirements or omit any of the requested contents may receive a reduced evaluation score. **Failure to meet all mandatory requirements may result in a reduced evaluation score of up to 10% of the total available points.** Factors upon which proposals will be evaluated include:

<b>Evaluation Criteria</b>	<b>Point Value</b>
1. Methodology	20
2. Qualifications, Experience and References	15
3. Quality, Customer Service, Customer Support	20
4. Participation: Small, Women-owned and Minority-owned Businesses	20
5. Pricing Plan	25
<b>TOTAL</b>	<b>100</b>

**IX. REPORTING AND PAYMENT INSTRUCTIONS**

During the term of any contract resulting from this solicitation, or any renewal thereof, the Offeror agrees that the following reports shall be submitted to the purchasing agency. Failure to comply with reporting and payment requirements of this section may result in payment(s) being withheld until compliance with the plan is received and confirmed. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default. Reference Section XI, entitled "Special Terms and Conditions," provision entitled "Cancellation of Contract."

***Reports below are due semi-annually on January 2 and July 1 for the previous six month period of invoiced sales. By no means shall reports be delivered later than the January 15 and July 15.***

Reports include, but are not limited to, the following:

**A. Utilization of Small Businesses and Business Owned by Women and Minorities**

Contractor shall provide a quarterly report on the involvement of small businesses and businesses owned by women and minorities. This report will specify actual dollars expended year to date, by month, with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses, as delineated herein under the section entitled “Small Business Subcontracting and Evidence of Compliance.”

The following information shall be provided in an electronic spreadsheet format as follows:

	<b>Firm Name &amp; Phone Number</b>	<b>SWaM Cert. #</b>	<b>SWaM * Type</b>	<b>T.I.N.</b>	<b>NIGP Code and Description of Services</b>	<b>Amount (\$)</b>
Example:	ABC Company, Inc. (123) 456-7890	123456	SW	12-3456789	96239 Hauling Services	\$123,456.78
*	<b>TOTAL</b>					<b>\$123,456.78</b>

\*Small (Small), Woman-owned (W), Minority-owned (M) or combination (i.e., SW, SM, etc.)

This report shall be submitted in electronic spreadsheet format via email to [Dennis.Donahue@dgs.virginia.gov](mailto:Dennis.Donahue@dgs.virginia.gov)

**B. Contractor's Report Of Sales**

Contractors shall provide electronic reports in Microsoft Excel format showing total invoiced sales data, which means all invoices issued within the reporting period. See attachment to this solicitation for the report template which identifies the information to be provided. Reports should show total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: [vssireport@dgs.virginia.gov](mailto:vssireport@dgs.virginia.gov).

Also, reports shall be submitted in a spreadsheet format and delivered electronically to the Contract Officer: [Dennis.Donahue@dgs.virginia.gov](mailto:Dennis.Donahue@dgs.virginia.gov).

Failure to submit information in the required format and time may result in cancellation of the awarded contract.

**X. GENERAL TERMS AND CONDITIONS**

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

**A. VENDORS MANUAL**

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

**B. APPLICABLE LAWS AND COURTS**

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

**C. ANTI-DISCRIMINATION**

By submitting their proposals, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E)

In every contract over \$10,000 the provisions in a and b below apply:

- a. During the performance of this contract, the contractor agrees as follows:
  - i. 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.
  - ii. 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.
  - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- b. The contractor will include the provisions of a above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**D. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of

more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**E. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

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

**F. DEBARMENT STATUS**

By 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 RFPs**

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

**I. CLARIFICATION OF TERMS**

If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the Contract Officer whose name appears on the face of the solicitation no later than five (5) working days before the due date. All inquiries must be submitted **in writing** to **Dennis Donahue, via email, at [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov)** or fax at 804-786-5413. Please include **RFP #E194-193** in the title of the message or fax cover page.

Any revisions to the solicitation will be made only by addendum issued by the Contract Officer and will be posted on the state procurement website at [www.eva.virginia.gov](http://www.eva.virginia.gov). No other notification will be made.

**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 (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in 2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such

certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

**K. PRECEDENCE OF TERMS**

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

**L. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. **Verification of stated qualifications should be provided with the Offeror's response.** The Commonwealth reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the Commonwealth that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

**M. TESTING AND INSPECTION**

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

**N. ASSIGNMENT OF CONTRACT**

A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

**O. CHANGES TO THE CONTRACT**

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the 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. TERMINATION FOR DEFAULT.** In case of default by a contractor for failure to deliver or perform in accordance with the contract specifications or terms and conditions, the Commonwealth may procure the articles or services from other sources and hold the defaulting contractor responsible for any resulting additional purchase and administrative costs. The Commonwealth will normally repurchase from the next low bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to the Commonwealth, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the contractor will be removed from the mailing list until the repayment has occurred. However, in the case of default, contracts may be canceled at any time without the contractor's consent. The Commonwealth also reserves the right to cancel all contracts with any contractor who fails to perform for any one contract.

**Q. TAXES**

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

## R. USE OF BRAND NAMES

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

## S. INSURANCE

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

### MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence 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.)

## T. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract as a result of this solicitation, DPS will publicly post such notice on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of ten (10) days.

#### **U. 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.

#### **V. NONDISCRIMINATION OF CONTRACTORS**

A 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 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.

#### **W. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS AND ORDERS**

The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://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 offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the 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](http://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.

**X. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Commonwealth shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract. If funds are unavailable or become unavailable for the purpose of this contract, the Commonwealth may invoke the "Termination for Convenience of the Commonwealth" Special Term and Condition immediately or at a later date, whichever is in the best interest of the Commonwealth.

**Y. OFFER PRICE CURRENCY**

Unless stated otherwise in the solicitation, Offerors shall state offer prices in US dollars.

**Z. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**

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

## XI. SPECIAL TERMS AND CONDITIONS

The following provisions are desirable. An Offeror may propose alternative language, but the basic form of the Agreement provisions shall be retained. Offerors are requested to limit proposed changes, if any, to those of a substantive nature. The Commonwealth may seek more specific or additional provisions during negotiations e.g., service requirements, support type (e.g., on-site, off-site, depot, etc.), warranties, response times, etc.

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**A. SCOPE OF AGREEMENT:** This is a master agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ for \_\_\_\_\_ (the "Services") pursuant to the Commonwealth's Request for Proposal RFP# \_\_\_\_\_, dated \_\_\_\_\_ (the "RFP") and the Contractor's proposal, dated \_\_\_\_\_ in response thereto.

(Above to be completed in negotiations, if any)

**B. INTERPRETATION OF AGREEMENT:** Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled \_\_ through \_\_, Attachment \_\_ entitled Services and Pricing Schedule; (2) all executed Orders and Attachments referencing this Agreement; (3) the Commonwealth's RFP; and (4) the Contractor's proposal submitted in response to the Commonwealth's Request for Proposal ("RFP"). The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

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

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

(Above to be completed in negotiations, if any)

**C. TERM**

The initial term contract period will be for one (1) year from date of award. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completely performed or services delivered.

**D. RENEWAL OF CONTRACT**

The Contract may be renewed at the sole discretion of the Commonwealth, for up to four (4) additional one (1) year successive periods under the terms and conditions of the original contract and upon mutual written agreement between the parties. Written notice of the Commonwealth's intention to renew shall be given approximately ninety (90) days prior to the expiration date of each contract period, of the Commonwealth's intent to renew the Contract.

**E. FINANCIAL WARRANTY**

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

#### **F. PRICE ESCALATION-DE-ESCALATION**

Discounts are to be considered the minimum for the entire term of the resulting contract. List price may be negotiated on an annual basis at the time of renewal or as negotiated. Price adjustments and/or discount adjustments may be permitted for changes in the contractor's cost of materials, services and other items that may not affect the price. The Producer Price Index of the United States Department of Labor, Bureau of Labor Statistics, "Completed Vehicles on Purchased Chassis" Commodity # WPS#1413-02 will be used by the Commonwealth as a guide in reviewing any Rate/Price increase requests. Price escalation may be authorized annually only at the time of contract renewal and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

The contractor shall document the amount of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers. All changes in the prices and / or discounts applicable to the Commonwealth must be approved in writing by the Division of Purchases and Supply prior to implementation by the contractor(s).

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

#### **G. 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.

## H. USE OF AGREEMENT BY THIRD PARTIES

The intent of this Agreement is to allow for those receiving public funds to benefit from this contract to the maximum extent possible. Accordingly, Contractor shall enter a contract with any private entity that receives DRPT or FTA grant funds ("Private Buyer"), at the Private Buyer's request. Contractor shall confirm that the entity seeking to enter a contract is, in fact, a Private Buyer.. If so, the contract between Contractor and the Private Buyer shall be, in all material respects and where applicable, identical to this Agreement, with the following modifications and exceptions:

1. The term "Authorized User" means the Private Buyer that receives DRPT or FTA grant funds.
2. The terms "Agreement" and "Contract" mean the contract between Contractor and the Private Buyer, where appropriate.
3. Only where necessary to effectuate the purpose that Private Buyers' rights under their contracts be materially identical to this Agreement, the term "Commonwealth" means the Private Buyer.
4. The following provisions of the General Terms and Conditions are not part of contracts with Private Buyers: L, O(2), Q, W, and X.
5. Modifications made to this contract by the Commonwealth will not be applied to contracts with Private Buyers. Contractor shall, within ten business days of executing a modification of the Agreement, offer to each Private Buyer to make an equivalent modification, which must be agreed to by the Private Buyer in writing. No other modifications of the terms and conditions of a Private Buyer's contract may be made.
6. Orders placed under a Private Buyer's contract require payment of the Surcharge Adjustment Fee, as though they were placed by a Commonwealth agency. Such orders shall be reported as though they were placed under this Agreement, but with a notation indicating they were made under a Private Buyer's contract.

Contractor shall notify the Commonwealth of Virginia, Division of Purchases and Supply (DPS) in writing by providing DPS a Contract Sales and Usage report for any entity placing an order(s) to use this Agreement in accordance with Contract Reporting provisions, herein.

This is a master agreement and no modification of the Agreement is required for an Authorized User to participate. However, any Authorized User outside the Commonwealth of Virginia, but within the United States, or any territory or legal entity thereof, and Contractor shall complete a "Participating Addendum," to be provided by DPS, prior to the use of the Agreement before the Contractor shall accept any Order from such an Authorized User outside of the Commonwealth, with a copy of the completed Participating Addendum provided to the Contract Officer, DPS Procurement.

Authorized Users will place their own Orders directly with the Contractor and will independently administer their use of this Agreement to include contractual disputes, and invoicing and payments, without direct administration from DPS. Neither the Commonwealth nor DPS shall be held liable for any costs or damages by any other participating Authorized User.

Contractor and Authorized User agree that neither the Commonwealth nor DPS are responsible for any acts or omissions of any Authorized User, and shall not be considered in default of this Agreement for such acts or omissions, no matter the circumstances.

The use of the Agreement does not preclude any participating Authorized User from using other agreements or competitive processes as their needs may require.

**I. AUTHORIZED REPRESENTATIVES**

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

Authorized Representatives:

**COMMONWEALTH OF VIRGINIA**

Dennis Donahue  
1111 East Broad Street  
Richmond, VA 23218  
Tel.: 804-786-5410  
Fax: 804-786-5413  
Email: [dennis.donahue@dgs.virginia.gov](mailto:dennis.donahue@dgs.virginia.gov)

**CONTRACTOR**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel.: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS AGREEMENT.**

**J. 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 Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth 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.

**K. DELIVERY AND STORAGE**

Contractor hereby certifies that it will meet any firm delivery or performance date provided herein, or any Order issued referencing the Agreement. Contractor shall be responsible to make all arrangements for delivery, unloading, receiving and storing materials in any facility during installation of any Equipment provided as a part of their Services under this Agreement. The Authorized User will not assume any responsibility for receiving these shipments. Contractor shall check with Authorized User and make necessary arrangements for security and storage space in a facility during installation.

**L. PROMOTIONAL DISCOUNTS**

For any special or promotional sale prices, reductions, or other discounts provided to any Authorized User eligible to use this Agreement, Contractor shall immediately extend and provide notification of such sale prices or discounts to the Commonwealth and all other Authorized Users

during the term of the Contract. Such notice shall also advise the duration of the specific sale or discount price. The Director, DPS Procurement shall be provided notice in advance of any such promotional discount being extended to any Authorized User that is eligible to utilize this Agreement.

**M. EXTRA CHARGES NOT ALLOWED**

Pricing for all Equipment covered under warranty/maintenance that is being returned as a furnish and install as a result of a return from the manufacturer or depot service, repair or replacement shall include complete delivery and installation and ready for the Commonwealth's or Authorized User's use and include all applicable freight and installation charges; extra charges shall not be allowed.

**N. FINAL INSPECTION**

At the conclusion of work, for any Equipment being returned as a furnish and install upon return of Equipment under Warranty/Maintenance from manufacturer or depot service, repair or replacement, Contractor shall demonstrate to the Authorized User's representative that the Equipment or work is fully operational and in compliance with OEM or contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense, prior to final Acceptance of the Equipment or the work by an Authorized User.

**O. INSTALLATION**

As applicable, for any product requiring installation, Contractor agrees to deliver, assemble, install and set in place all items, ready for use or acceptance testing, as appropriate, and remove all crating and other shipping debris from the Authorized User's premises.

**P. PRODUCT AVAILABILITY/SUBSTITUTION**

Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the DPS Contacting Officer or the Authorized User. An Authorized User may, at its discretion, require the Contractor to provide a substitute item of equivalent or better quality subject to their written approval, for a price no greater than the Contract price, if the product for which a Contract Order was issued becomes unavailable to the Contractor.

**Q. MAINTENANCE MANUALS**

As necessary in the performance of equipment under this Agreement, or as otherwise appropriate, Contractor shall provide with each piece of Equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

**R. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT**

By their signature on this solicitation, Offerors certify and warrant that their firm, and any individual employees and/or subcontractor(s) is/are properly certified and/or licensed by the appropriate federal, state, or other regulatory authorities to provide all goods/services specified or fulfill the requirements delineated herein.

**S. PRIME CONTRACTOR RESPONSIBILITIES**

The Contractor shall have prime responsibility for completely and solely supervising and directing all work performed, goods provided and/or services provided under this Contract, and for all subcontractors the Contractor may utilize. Subcontractors that perform work under this Contract shall be responsible to the prime contractor. Contractor agrees that it shall be fully and solely responsible for the acts and omissions of its subcontractors and of any persons employed by them as he is for the acts and omissions of his own employees.

**T. SUBCONTRACTS**

No portion of the work shall be subcontracted without prior written consent of the DPS Contract Officer. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the DPS Contract Officer the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

**U. CONTRACTOR ACCESS TO AUTHORIZED USER LOCATIONS**

The Commonwealth or any Authorized User using the Contract shall grant to Contractor personnel such access to their location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Authorized User location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Authorized User location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Authorized User would consider reasonable for security measures. These forms may include the individual employee's agreement that all Authorized User information that is garnered while at the Authorized User's site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement, and subject to any remedies the Commonwealth or any Authorized User is entitled to thereby.

**V. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION**

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

**W. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND**

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

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

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:

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

For orders issued prior to July 1, 2014 the vendor transaction fees can be found at [www.eVA.virginia.gov](http://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.

**X. EXCLUSIVITY OF TERMS AND CONDITIONS**

No employee or agent of the Commonwealth or Authorized User shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions; excluding the Participating Addendum as required for as stipulated under the section herein entitled "Use Of Agreement By Third Parties." Notwithstanding the afore-mentioned, any documents signed by persons other than the Director, DPS Procurement or their authorized designee shall have no validity or effect upon the Contract

**Y. LOBBYING AND INTEGRITY**

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

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

**Z. ORDERS**

Authorized Users may order goods and/or services from this Contract by any of the following methods:

a. eVA: Use of eVA for ordering is mandatory for all Commonwealth agencies and institutions of higher education. All other Commonwealth public bodies and Authorized Users are encouraged to place orders through eVA, the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>. Authorized Users that are not Commonwealth Authorized Users that wish to utilize this Contract may use their own purchase order process, as long as reference is made to the contract number.

b. Over the Counter Purchases: Charge card purchases, made at the site of the sale and picked up by the individual, are not required to be processed through eVA.

**AA. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE**

A. It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are

required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DSBSD-certified small business and where it is not practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

- B. Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a semi-annual basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a semi-annual basis, information on use of subcontractors that are not DSBSD-certified small businesses. 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.

**BB. VIRGINIA STATE CORPORATION COMMISSION IDENTIFICATION NUMBER**

Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the Offeror is not required to be so authorized. 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 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.

**CC. E-VERIFY PROGRAM**

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.

**DD. TERMINATION FOR CONVENIENCE OF THE COMMONWEALTH:**

The contract may be terminated for the convenience of the Commonwealth by delivering to the contractor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified. There shall be no penalty to the Commonwealth when a contract is terminated for convenience.

**EE. CONTINUITY OF SERVICES**

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

- a. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
- b. To make all agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
- c. That the Agency Contract Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.

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

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

**XII. INVOICES AND METHOD OF PAYMENT**

- a. **Invoices:** As applicable, all invoices shall be submitted to the Authorized User after all Goods and/or Services covered by the invoice have been provided. The Contractor shall invoice monthly in arrears. No invoice may include any cost other than those identified in the Agreement or individual Order referencing this Contract. Invoices shall provide at a minimum:
  - i. Name of Authorized User (the ordering entity)
  - ii. Authorized User point of contact name
  - iii. Description of the Goods and/or Services provided
  - iv. Invoice number
  - v. Invoice date

- vi. Monthly charges
- vii. Contract Number
- viii. Purchase Order Number

Contractor shall render invoices for any Authorized User in accordance with the instructions contained in the Order.

b. **Methods of Payment:**

- i. Payment will be made within thirty (30) days of receipt of a valid invoice for all goods and/or services provided during the previous month. Contractor shall submit a valid invoice to the invoice address designated in any Order issued by an Authorized User in accordance with the invoice mailing instructions therein.
- ii. For valid invoices in the amount of \$5,000 or less, or any then-current charge card small dollar usage threshold, Contractor shall accept payment using the Commonwealth of Virginia's Small Purchase Charge Card (SPCC), if the SPCC card is offered for payment. For any amount exceeding \$5,000, or any then-current charge card small dollar usage threshold, Contractor shall accept payment by the Commonwealth's Gold Card, if the Gold Card is offered for payment.
- iii. Payment may be made by any other duly authorized official payment method or card as mutually agreed upon between any Authorized User and the Contractor.

### **XIII. PRICING SCHEDULE**

The Commonwealth will evaluate pricing proposals for award purposes based on the pricing provided in Attachments H.

Consideration will also be given to the discount structure and methodology behind providing the Commonwealth with the best discounts and value possible.

### **XIV. ATTACHMENTS**

*(Complete and include all attachments below except "G" with your proposal response on hardcopy-will be included in 50 typed page limit.)*

- Attachment A – Federal Conditions of Manufacturer/Vendor and Certifications
- Attachment B – Vendor Data Sheet
- Attachment C – Proprietary and Confidential Information
- Attachment D – Exceptions to RFP
- Attachment E – State Corporation Commission Form
- Attachment F – Small Business Subcontracting Plan
- Attachment G - Volume Sales Report Template
- Attachment H – Pricing Schedule

## ATTACHMENT A

### Federal Conditions of Manufacturer/Vendor and Certifications

#### **Fly America Requirements**

Applicability- all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

#### **Buy America Requirements (Rolling Stock)**

Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000)  
Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 53230X2)(C) and 49 CFR 661.11 and as amended by Map-21 (5325). Rolling stock must be manufactured in the US and have a minimum 60% domestic content and adhere to contract term limitations. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

#### **Cargo Preference**

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated,

"on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

### **Energy Conservation**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

### **Clean Water**

All Contracts and Subcontracts over \$100,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 -1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Bus Testing**

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

### **Pre-Award & Post Delivery Audit Requirements**

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey

Contractor shall comply with 49 USC 5323(1) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and

B. The location of the final assembly point for the rolling stock, including a description of the activities that will take

place at the final assembly point and the cost of final assembly.

C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.

D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-

certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

### **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contract over \$100,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]- Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **Access to Records and Reports**

Applicability- As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites

pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i){11}.

FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract.

Contractor's failure to comply shall constitute a material breach of the contract.

### **Clean Air**

All contracts over \$100,000

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42

U.S.C. §§ 7401 – 7671q. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

**Contract Work Hours & Safety Standards Act**

Applicability- Contracts over \$100,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages -the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts- Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

### **No Government Obligation to Third Parties**

Applicability- All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability- All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate. (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **Termination**

Applicability- All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in

possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to

fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by

the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that

contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor,

the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

#### **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part

1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **Civil Rights Requirements**

Applicability- All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) . The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal

Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11

Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of FAST Act, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under FAST Act and previous legislation, e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving

Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) U.S. DOT regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance, h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights

Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd-290dd-2, i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

### **Breaches and Dispute Resolution**

All contracts over \$100,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or

contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **Disadvantaged Business Enterprise**

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

#### Prompt payment

Applicability- All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in current FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

#### Other Federal Requirements

The following requirements are not federal clauses.

#### Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

#### Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

#### Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### **Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

### **Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to

time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

### **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Restrictions**

The Recipient agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a Recipient that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December

15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA

### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That Impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations and (2 CFR §200.501). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award

identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

**CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA. and as separate rows under Item 9 of Part III on the SF- SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

**Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

*(Send proposal responses for Certifications below on hardcopy, fully completed, and signed.)*

**BUS TESTING CERTIFICATION**

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The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the U.S. Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

---

Name of Bidder/Company Name

---

Type or print name

---

Signature of authorized representative

---

Signature of notary and SEAL

Date of **Signature**:-----''-----'----

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_ "hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Offeror/Company Name)

no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. § 3801, et seq., are applicable thereto.*

Name of Offeror/Company **Name**----- Type or  
print name \_\_\_\_\_

Signature of authorized **representative**-----Date \_\_\_/\_\_\_/\_\_\_ Signature

of notary and **SEAL**-----

**PRE-AWARD CERTIFICATION REQUIREMENT FOR PROCUREMENT OF ROLLING STOCK  
(RECIPIENT)**

**BUY AMERICA REQUIREMENTS**

Offeror shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If Offeror certifies compliance with Buy America, it shall submit documentation listing:

- A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
- B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- C. Solicitation Specification Requirements: Offeror shall submit evidence that it will be capable of meeting the bid specifications.
- D. Federal Motor Vehicle Safety Standards (FMVSS): Offeror shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

As required by 49 C.F.R. pt. 663- Subpart B,

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(the recipient) is satisfied that the buses to be purchased,

-----**(number** and description of buses) from

---

\_\_\_\_\_(the manufacturer), meet the requirements of § 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient or its appointed analyst \_\_\_\_\_ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

### GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. pt. 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. pt. 180,

2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspended,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a-2.d above, it will promptly provide that information to FTA.

**FTA, GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 C.F.R. pt. 1200 and 2 C.F.R. pt. 180 if it:

1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier Offeror and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 C.F.R. pts. 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project,
  - or
  - f. Disqualified from participation in its federally funded Project, and

h. It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Sub-recipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Offeror \_\_\_\_\_

Signature of Authorized Official ----- **Date** \_\_/\_\_/\_\_ Name and Title of Offeror's Authorized Official

## ATTACHMENT B VENDOR DATA SHEET

**Note: The following information is required and failure to submit all information requested may result in the Commonwealth requiring prompt submission of missing information.**

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

2. Vendor's Primary Contact:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

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

\_\_\_\_\_ Years \_\_\_\_\_ Months

4. Type of Business: This following is for informational purposes only. Please indicate if your business is one or more of the following:

- SMALL BUSINESS                       INDIVIDUAL BUSINESS                       OTHER:  
 WOMAN-OWNED BUSINESS                       SOLE PROPRIETORSHIP  
  
 MINORITY-OWNED BUSINESS                       PARTNERSHIP  
 SHELTERED WORKSHOP                       CORPORATION

5. Provide information of at least three (3) current or recent accounts, either commercial or governmental, that your business has provided similar products and/or services.

a. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone :(\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

b. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone :(\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

c. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone :(\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

**I certify the accuracy of this information:**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_





**ATTACHMENT E**  
**Virginia State Corporation Commission Form**

**Virginia State Corporation Commission ("SCC") registration information:**

**The undersigned Offeror:**

is a corporation or other business entity with the following SCC identification number:  
\_\_\_\_\_.

**-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

**-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location)

**-OR-**

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the *Code of Virginia*.

**\*\* NOTE \*\***

Check this box if you have not completed any of the foregoing options, but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals.\*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Date: \_\_\_\_\_

\* The Commonwealth reserves the right to determine in its sole discretion whether to allow such a waiver.

**ATTACHMENT F**  
**Small Business Subcontracting Plan**

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential Offerors are required to submit a Small Business Subcontracting Plan.

**Small Business:** "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify under the definitions below.

Certification applications are available through DSBSD online at [www.DSBSD.virginia.gov](http://www.DSBSD.virginia.gov) (Customer Service).

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Instructions**

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the Offeror to be declared responsive, the Offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the Offeror's total price for the initial contract period. in Section B.

**Section A**

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

**Section B**

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the Offeror's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that the proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

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

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



## ATTACHMENT H

### Pricing Schedule

To submit a proposal, please complete Attachment H “PRICING SCHEDULE – WORKSHEET” for all buses offered. Attach one (1) completed worksheet for each bus type offered. Include “Top 15” list on most requested add-ons/or additional options as indicated on the worksheet.

A list of low floor type transit busses we are seeking proposals is below. All buses offered shall be Low Floor Transit Buses, Heavy Duty, 12 Year type.

- 30' bus Diesel Bus
  
- 35' Diesel Bus ( or hybrid)
- 35' CNG Bus ( or hybrid)
  
- 40' Diesel Bus ( or hybrid)
- 40 ' CNG Bus ( or hybrid)
  
- 60' Diesel Bus ( or hybrid)
- 60' CNG Bus ( or hybrid)

Submit proposals on the following alternate powered buses as applicable:

All-Electric Buses  
Biodiesel and Propane Buses  
Compressed Natural Gas (CNG) Buses  
Hybrid-Electric Buses  
Liquefied Natural Gas (LNG)

