

## SECTION II

### SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

The following is an index of Special Terms and Conditions clauses. Some are mandatory whereas others may be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing, and services and are followed by a brief explanation (indicated by an asterisk \*) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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### **MANDATORY FOR MOST CONTRACTS**

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**\* When Used: Must be included in all term contracts for goods or services and all prime vendor contracts requiring a Small Business Subcontracting Plan for contracts over \$100,000.**

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1. **AWARD OF CONTRACT:** All solicitations must specify the method of award.

- A. **AWARD:** An award will be made to the lowest responsive and responsible. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

**\* When Used: For use when soliciting bids for goods or services.**

- B. **AWARD:** The Commonwealth will make the award(s) on \_\_\_\_\_ basis to the lowest responsive and responsible bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

- C. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable

**\* When Used: For use when multiple line items are involved, provided that multiple awards may result in a savings to the Commonwealth.**

- D. **AWARD TO MULTIPLE BIDDERS:**

1. The Commonwealth will make awards on a \_\_\_\_\_ basis to the lowest responsive and responsible bidders, provided that the next lowest bidders are within \_\_\_\_% of the lowest bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the bidder to render required services. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. This clause shall not be used in a Request for Proposals.**

2. **AWARD TO MULTIPLE BIDDERS:** The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirements of the solicitation. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When Used: For goods or nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing agency. This clause shall not be used for construction or professional services.**

- E. **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.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

- F. **AWARD TO MULTIPLE OFFERORS:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the 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 reserves the right to make multiple awards as a result of this solicitation. 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.

**\* When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the agency/institution. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

- G. **AWARD:** The Commonwealth shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be

encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

**\* When Used: Professional services only. This clause shall not be used in an Invitation for Bids or to procure non-professional services.**

H. **Delete**

I. **Delete**

J. **Delete**

K. **Delete**

L. **AWARD:** The Commonwealth will make the award(s) on \_\_\_\_\_ basis to the lowest responsive and responsible bidder that is a DSBSD-certified micro business if such a bid is received, provided that the bid is less than \$10,000 and the agency in its sole discretion determines that the bid price is fair and reasonable. Otherwise, award of the contract shall be made to the lowest responsive and responsible bidder that is a DSBSD-certified small business if such a bid is received, provided that the bid is not more than \$100,000 and the agency in its sole discretion determines that the bid price is fair and reasonable. If, in the agency's opinion, the criteria in the previous two sentences are not present, then award shall be made to the lowest responsive and responsible bidder of any size, provided the agency in its sole discretion determines that the price is fair and reasonable. If applicable, unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for early prompt payment will not be considered in making awards. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

**\* When Used: This award clause may be used in invitations for bids for goods or non-professional services that are set-aside in accordance with the Small Business Enhancement Award Priority by filling in the blank, i.e., line item, total sum, lot, etc. This shall not be used in informal request for proposals.**

M. **AWARD:** Selection shall be made of two or more DSBSD-certified micro business 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, provided that the price proposal is for less than \$10,000. 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 DSBSD-certified micro business offeror is fully qualified, or that one such offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. Any award to a DSBSD-certified micro business offeror pursuant to the above process may be made only if the price as negotiated remains under \$10,000. 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. If the agency in its sole discretion determines that the above criteria for limiting the negotiation to micro businesses are not present, the agency shall follow the same process as specified above, but restricting the negotiation instead to DSBSD-certified small business offerors, provided that the price proposal is not more than

\$100,000. If the agency determines that the above criteria for limiting the negotiation to small businesses are not present, the agency shall follow the same process as specified above, but without restricting the negotiation to small or micro business offerors.

**\* When Used: This award clause may be used in competitive negotiations for goods or services where the procurement is set-asides in accordance with the Small Business Enhancement Award Priority.**

3. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**\* When Used: Include in all term contracts for goods or services. This clause is not appropriate for use in spot purchases.**

4. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in (\_\_\_\_\_) purchase order(s) with the applicable eVA transaction fee assessed for each order.

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

**\*When Used: This Special Term and Condition 4 shall be included in all solicitations, contracts and contract renewals. If the quantity of orders that will be issued is known, insert the expected number of orders in the blank provided (e.g., one, twelve, monthly, etc.). If the exact quantity is unknown, change the first sentence to read, "It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order."**

5. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either "one year" or complete the blank, indicating the number of "successive one year periods" the contract may be renewed.)

- A. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (one year)/(\_\_\_\_ successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

**\* When Used: Include in solicitations for term contracts for goods and services, if desired, to permit renewal of the contract for a specific period of time, i.e., one year, two successive one-year periods, etc., at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. If market prices are not expected to remain stable for goods, the Price Escalation/De-escalation clause (No. 43) should be considered for use with this provision.**

- B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (one year)/(\_\_\_\_ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- **When Used:** For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps). Click on the “references” tab along the top of the screen and a link to their web site is listed under “Bureau of Labor Statistics.”

#### **AS INDIVIDUAL PROCUREMENTS MAY DICTATE**

6. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

**\* When Used:** For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.

7. **AS BUILT DRAWINGS:** The contractor shall provide the Commonwealth a clean set of reproducible “as built” drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the Commonwealth with maintenance manuals, parts lists and a copy of all warranties for all equipment. All “as built” drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Commonwealth upon completion of the work and prior to final payment.

**\* When Used:** For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.

8. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at anytime during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

**\*When Used:** Authorization to use this clause must be granted by DPS, see 3.7a. If the value of the contract, including any renewal periods is within the delegated authority of the lead agency and other agencies and institutions may benefit, the lead agency may issue a solicitation and include this clause on behalf of other public bodies. The value of the contract, including other agency orders, must remain within the lead agency’s delegated authority. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.

9. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best And Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror’s proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.

**\* When Used:** Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be

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used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer. See 7.4 for further guidance.

10. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for ( ) days. At the end of the days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

**\* When Used:** The *Vendors Manual*, 6.2 states that bids must be valid for the number of days stated.

11. **BID BOND OR GUARANTEE:** Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cash escrow or a bid bond payable to the Treasurer of the Commonwealth of Virginia. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw such bid during the period of \_\_\_\_\_ days following the opening of bids; that if such bid is accepted, the bidder will accept and perform under the terms of the Invitation for Bids and purchase order or contract. The bid guarantee will be returned upon award of contract.

**\* When Used:** Must be used in all solicitations for construction type contracts over \$100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under \$100,000, as well as for goods or services of any dollar amount. Do not use in RFPs.

12. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.

**\* When Used:** In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.

13. **BLANKET FIDELITY BOND:** Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of "A" or better, as reflected in their most current publication, covering all personnel under contract to the Commonwealth of Virginia, with a penalty amount of not less than \$\_\_\_\_\_, naming the Commonwealth of Virginia as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of licensed Virginia insurance agent. The contractor agrees to maintain such bond until one year after the completion of the contract.

**\* When Used:** Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the agency's outstanding accounts.

14. **CERTIFICATION OF MEAT PRODUCTS:** By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

**\* When Used:** All solicitations for meat products.

15. **CERTIFIED TEST REPORT:** Each bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Commonwealth reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

**\* When Used:** For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.

16. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: \_\_\_\_\_

License # \_\_\_\_\_ Type \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

License # \_\_\_\_\_ Type \_\_\_\_\_

**\* When Used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors or subcontractors to be properly registered, licensed or hold a permit prior to performing such work. See 3.4.**

17. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for \$120,000 or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$750,000 or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for \$10,000 or more but less than \$120,000, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$150,000 or more, but less than \$750,000 or more, the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is over \$1,000 but less than \$10,000, or if the contractor does less than \$150,000 in business in a 12-month period, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors. The bidder/offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

Licensed Class B Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

Licensed Class C Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

If the bidder/offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If a bidder/offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

**\* When Used: Required to be used in all solicitations by the *Code of Virginia* for all construction, removal, repair or improvements to facilities to be performed by a contractor and its subcontractors. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, mechanical, plumbing, electrical, carpentry, etc. When in doubt as to whether or not this clause should be included in the solicitation, contact the Department of Professional and Occupational Regulation, State Board for Contractors, at 804-367-2785.**

18. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

**\* When Used: For use in solicitations for construction and for furnish and install equipment.**

19. **DELIVERY:** Delivery of goods or performance of services shall be within the number of calendar days stated below after receipt of order (ARO) by the bidder/offeror. The Agency requires the (bidder/offeror) to deliver within a reasonable time after ARO. If the bidder/offeror does not insert a stated delivery time in the blank below, the (bidder/offeror) will be deemed to offer delivery in accordance with the Agency's desired delivery time as stated below:

Agency's desired delivered time: \_\_\_\_\_ calendar days ARO

**BIDDER'S/OFFEROR'S STATED DELIVERY TIME: \_\_\_\_\_ CALENDAR DAYS ARO**



**\*When Used:** Include when a firm delivery date is not specified by the agency. An agency may not reject a bid or proposal because the bidder/offeror stated a longer delivery date as long as it is within a reasonable time after receipt of order.

20. **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.

**\* When Used:** For furnish and install solicitations, if applicable.

21. **DELIVERY NOTIFICATION:** The Agency shall be notified \_\_\_\_\_ hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

**\* When Used:** Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.

22. A. **PROMPT PAYMENT DISCOUNTS:** Agency will pay within \_\_\_\_ days after acceptance. A prompt payment discount offered for prompt payment of ( ) calendar days or longer will be calculated in determining net low bid.

**\* When Used:** When the agency knows payments can be made within the time frame specified.

- B. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**\* When Used:** This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.

23. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for the Commonwealth's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

**\* When Used:** For furnish and install solicitations. Also may be used for inside delivery by changing the wording.

24. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with 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 work.

**\* When Used:** For furnish and install solicitations.

25. **FLAME RETARDANT CERTIFICATE:** Each bidder/offeror shall submit a certification in writing with their bid/proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701 (latest version), large or small scale test.

**\* When Used:** Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.

26. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: \_\_\_\_\_  
Name of Bidder/Offeror      Due Date      Time

Street or Box Number

IFB No./RFP No.

City, State, Zip Code

IFB/RFP Title

DSBSD-certified Micro Business or Small Business No. \_\_\_\_\_

Name of Contract/Purchase Officer or Buyer \_\_\_\_\_

**\* When Used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate. If the solicitation is a combined two-step IFB, the bidders should be instructed to identify the outside of both the technical proposal and the pricing envelopes to show the bidder's name, company name and address, and bid reference number. If the bid/proposal is set-aside for DSBSD-certified Micro Business or Small Businesses, the bidder/offeror shall provide the DSBSD-certified Micro Business or Small Business number.**

27. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

**\* When Used: For all contracts involving substantial risk of third party injuries/claims. Authorization to use this clause must be granted by the Department of Treasury, Division of Risk Management or be directed by your Assistant Attorney General.**

28. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

**\* When Used: Should be used in furnish and install, services and non-capital outlay construction projects.**

29. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

**\* When Used: For inside delivery of goods which require unpacking and assembly.**

30. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Commonwealth of Virginia, with limits of coverage of not less than \$\_\_\_\_\_ for Loss Inside the Premises Coverage and not less than \$\_\_\_\_\_ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured with respect to this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Commonwealth is remitted to the Commonwealth.

**\* When Used: Required for contracts covering the collection, handling, safekeeping, and/or transporting state monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

31. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

**\* When Used:** Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, pesticides, chemicals of all types, etc. (see clause #35).

32. **LIMITATION OF LIABILITY:**

- A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\* When Used:** This clause should be used on an exception basis and only when it is anticipated that liability may be an issue and the risk and liability to the Commonwealth is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

- B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of \$\_\_\_\_\_ or \_\_\_\_\_ times the amount of money paid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\* When Used:** This clause should be used on an exception basis and only when it is anticipated that liability will be an issue and the risk to the Commonwealth may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

33. **LIQUIDATED DAMAGES:** (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.

- A. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES:** Delivery is required not later than \_\_\_\_\_. It is understood and agreed by the bidder/offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time

for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

**\* When Used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

- B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin \_\_\_\_ calendar days after receipt of purchase order or contract and all work shall be completed in \_\_\_\_ calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

**\* When Used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the bidder/offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.**

**NOTE: GENERAL COMMENTS:**

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Commonwealth may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification, or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Commonwealth will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

- (1) The cost of substitute facilities;
- (2) The rental of buildings and/or equipment.

**ASSESSMENT PROCEDURES:**

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the contractor (see Chapter 10, Contract Administration); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default (see Chapter 10, Contract Administration).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

34. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

**\* When Used:** For solicitations to purchase or furnish and install major equipment or systems.

35. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

**\* When Used:** Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types (See clause #31).

36. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

A. 1. 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 bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/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 bidder/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 bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

2. 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 \_\_\_\_\_ (insert monthly, quarterly, or other frequency) \_\_\_\_\_ 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.

3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a \_\_\_\_\_ (insert monthly, quarterly, or other frequency) \_\_\_\_\_ 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.

**\* When Used:** Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000 that are not set-aside for small business unless a written determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist is made. Fill in the blank with period of time or occurrence when evidence of compliance is due, e.g., request for final payment, monthly, quarterly, annually, end of contract period.

B. If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.”

**\* When Used:** Unsealed Request for Proposals over \$10,000 up to \$100,000 for services, where the award was made pursuant to the Small Business Enhancement Award Priority. **Not for Quick Quotes, unsealed bidding, Invitations to Bid.**

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37. **NAME OF MANUFACTURER AND SHIPPING POINT:** Each bidder/offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

ITEM NUMBER(S): \_\_\_\_\_

MANUFACTURER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SHIPPING POINT: \_\_\_\_\_

**\* When Used: For spot purchases or annual contracts for goods if the agency desires this information.**

38. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

**\* When Used: This clause may be used in those circumstances where, due to unknown cost factors, there may be a need to negotiate to remain within available fund limitation. For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine (see 6.7).**

39. **ORDERING OPTION:** The (name of agency), may during the first sixty (60) days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.

**\* When Used: This can be used when purchasing goods on a spot basis and the contracting officer anticipates that there might be an additional requirement for the same goods within the next sixty (60) days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not to be used for term type contracts.**

40. **PERFORMANCE AND PAYMENT BONDS:** The successful bidder shall deliver to the purchasing office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

**\* When Used: Must be used in all solicitations for construction which exceed \$100,000, but may be for construction, goods and services for less than \$100,000.** (Forms may be downloaded from the DGS/Division of Engineering & Buildings web site, <http://deb.dgs.state.va.us/BCOM/>).

41. **PREBID/PREPROPOSAL CONFERENCE - MANDATORY/OPTIONAL:** (Note: Select one of the following two clauses if a mandatory or optional prebid or preproposal conference is desired and include it in the solicitation.)

- A. **MANDATORY PREBID/PREPROPOSAL CONFERENCE:** A mandatory prebid/preproposal conference will be at \_\_\_\_\_ (time and date) at the \_\_\_\_\_ (place). The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all bidders/offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those bidders/offerors who are represented at this prebid/preproposal

conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. No one will be admitted after \_\_\_\_ (time) \_\_\_\_.

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

**\* When Used:** For use in complex procurements when clarification of the contents of the solicitation to potential bidders/offerors will greatly enhance understanding of what is sought to be procured. **CAUTION:** Use of this clause may limit competition because only those that attend may submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., prebid, bid, bidder in an IFB and preproposal, proposal, offeror in an RFP.

- B. **OPTIONAL PREBID/PREPROPOSAL CONFERENCE:** An optional prebid/preproposal conference will be held at \_\_\_\_ (time) and (date) \_\_\_\_ at the \_\_\_\_ (place) \_\_\_\_\_. The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a bid/proposal, bidders/offerors who intend to submit a bid/proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

**\* When Used:** For use in less complex procurements when vendor input is desired. Bidders/Offerors that do not attend may still submit a bid/proposal. Use wording appropriate to the type of solicitation.

42. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

**\* When Used:** For equipment purchases only in conjunction with a warranty clause which requires preventive maintenance during the warranty period.

43. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: \_\_\_\_\_. No price increases will be authorized for \_\_\_\_ calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each \_\_\_\_ days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price 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.

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.

**\* When Used:** For annual goods contracts where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Enter the appropriate number of days in the blank space, such as 30, 60, 90 or 180 days, depending on the commodity and how frequently costs change. Examples of indices to be used are the Producer Price Index (PPI) and the Consumer Price Index (CPI).

44. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

**\* When Used: For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.**

45. **PRINTING:** (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

- A. **OVERRUNS/UNDERRUNS:** Bids for printing will be rejected if the quoted overrun cost equals or exceeds the base lot price quoted for the equivalent incremental unit quantity. On bids for multiple part forms, envelopes, and signage, the additional overrun quoted shall not exceed the base lot price quoted for the equivalent incremental quantity. The agency may at its discretion accept an underrun, provided credit is allowed the agency at the full base price per unit for the quantity of the underrun.

**\* When Used: Must be included in all printing solicitations.**

- B. **ACCEPTABLE BRANDS:** Only papers designated as "mill brand" in the latest edition of the Competitive Grade Finder (published by Grade Finders, Inc.) will be used to determine the acceptable brands for the purpose of this bid invitation. Private brand papers and business equipment brand papers will not be considered equivalent to mill brand papers.

Papers which have been accepted by Grade Finders, Inc., for publication in subsequent editions of any of its paper buyer guides will be considered. For products not listed in the current Competitive Grade Finder, a copy of Grade Finders' letter of acceptability should be included with your returned bid. Failure to provide this requested information as specified may be cause for your bid to be rejected.

**\* When Used: Whenever a specific paper is specified along with the phrase "or equivalent."**

- C. **OWNERSHIP OF PRINTING MATERIALS:** All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Commonwealth. Any furnished materials shall remain the property of the Commonwealth. All such items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

**\* When Used: Must be included in all printing solicitations.**

- D. **PRINTING PICK-UPS/DELIVERIES:** Contractor shall be responsible for all pick-ups and deliveries of all materials.

**\* When Used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the agency.**

- E. **QUALITY COLOR PRINTING:** Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

**\* When Used: Include in all printing solicitations involving four-color process of more than one picture.**

46. **PRINTING DEFINITIONS:** (Note: Include one of the appropriate definitions in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)

- A. **CLASS 1 - CRITICAL QUALITY PRINTING:** This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artist's original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above "pleasing colors." Finishing and bindery operations shall be of this same critical quality.

- B. **CLASS 2 - EXCELLENT QUALITY PRINTING:** This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as "Class 1." Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready copy is



generally furnished. Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

C. **CLASS 3 – GOOD QUALITY PRINTING:** This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as “Class 2.” Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screen tints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

D. **CLASS 4 - MEDIUM QUALITY PRINTING:** This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No colors overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

47. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

**\* When Used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

48. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

**\* When Used: For term contract solicitations only.**

49. **RECYCLED PAPER:** The agency (or institution name) in determining the award of any contract for paper and paper products, shall procure using competitive bidding and shall award to the lowest responsive and responsible bidder bidding recycled paper and paper products of a quality suitable for the purpose intended, and in accordance with current EPA procurement guidelines for paper and paper products, so long as the bid price is not more than ten percent (10%) greater than the bid price of the lowest responsive and responsible bidder offering a product that does not contain recycled materials.

Bidder agrees to furnish upon request, a minimum of fifty (50) sheets of paper stock offered. Paper stock to be used for testing on agency (or institution name) equipment (may specify equipment that paper will be tested on) to ensure compatibility. If requested, samples must be delivered within five (5) days.

**\* When Used: Use in solicitations for paper and paper products.**

50. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

**\* When Used: For furnish and install solicitations where contractor must have knowledge of proper installation or for the procurement of complex goods or services.**

51. **SECURITY LICENSE:** In accordance with *Code of Virginia* § 9.1-139 the bidder/offeror or their subcontractor shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work:

installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. The bidder/offeror shall place their license number or their subcontractor's license number in the space provided below:

Bidder/Offeror Private Security Services Business License

Number: \_\_\_\_\_

Subcontractor Private Security Services Business License

Number: \_\_\_\_\_

For assistance, bidders/offerors may contact the Department of Criminal Justice Services at 804-786-4700.

**\* When used: In all solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service that require the contractor to have a Private Security Services Business License issued by the Department of Criminal Justice Services under the *Code of Virginia* § 9.1-139.**

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

**\* When Used: In solicitations to furnish and install or specialty services when subcontracting will be permitted only upon prior approval of the purchasing agency. Use also when a contractor's or a subcontractor's license is required to perform the specialty service.**

53. **USE OF RECYCLED MATERIALS:** Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide the following information in this regard:

1. Do any of the goods offered contain recycled materials? \_\_\_\_ Yes \_\_\_\_ No.
2. If so, please qualify the recycled material content. \_\_\_\_\_.

**\* When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

54. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of \_\_\_\_\_ following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

**\* When Used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

55. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

**\* When Used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

56. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

**\* When Used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

57. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, the contractor shall furnish the agency with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the agency has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

**\* When Used: This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. Agencies should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.**

58. **EMPLOYMENT SERVICES ORGANIZATIONS:**

A. Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to employment services organizations. A list of employment services organizations can be found at [www.vadrs.org](http://www.vadrs.org) or [www.eva.virginia.gov](http://www.eva.virginia.gov).

B. Each prime contractor who is awarded a contract where using a employment services organization is a condition of the award, shall deliver to the agency or institution, on or before request for final payment, evidence and certification of compliance. When a portion of the contract has been subcontracted to these organizations and upon completion of the contract, the contractor agrees to furnish the purchasing office, at a minimum, the following information: name of employment services organization, telephone number, total dollar amount subcontracted, and type of product/service provided. Final payment under the contract may be withheld until such certification is delivered or other appropriate remedies may be assessed in lieu of withholding such payment.

**\* When Used: Use paragraph A. if the solicitation involves the packaging or assemblage of goods where the individual item weighs less than 50 pounds and can be performed by a employment services organization. Use paragraph B. in solicitations for goods, and nonprofessional services, that involves the packaging or assemblage of goods where the individual items weighs less than 50 pounds when a use of a employment services organizations is a condition of the award (see 2.2 c.).**

59. **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.

**\*When Used: Include in contracts when contractors utilize, access, or store personally identifiable information in the performance of the contract.**

60. **CONTINUITY OF SERVICES:**

- a.) The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
- (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  - (ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - (iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
- c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

**\*When Used: Include in term contracts for ongoing services when an orderly and efficient transition from the contractor to its successor will be critical to continuity of operations for the vital services required.**

61. **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the Contract Officer. The Agency may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

**\*When Used: Include in term contracts for commercial off the shelf goods when product availability is subject to change over time.**

62. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

**\* When used: In all Competitive Sealed Bidding or Competitive Negotiation solicitations (IFBs and RFPs).**

63. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

**\* When used: In all solicitations for services in excess of \$50,000.**

64. **EMERGENCY EVENT PRICING:**

- a. Subsection (b) below shall take effect if 1) the Commonwealth or the federal government declares a state of emergency affecting the area where the venue is located within 5 days of the event, or 2) if state or local government offices are closed on an emergency basis in the area in which the venue is located within 5 days of the event:
- b. If an event described in subsection (a) occurs, the Commonwealth may cancel any number of hotel reservations, conference reservations, and any amount of food and beverage services for the event or all reservations and all food and beverage services. In that event, the Commonwealth shall pay Contractor 25% of the contract price of those reservations and services as listed below;
  - i. 25% of the catering revenue based on the difference between the attendees anticipated and the number of attendees fully paid for
  - ii. 25% of the difference in revenues between the lodgers anticipated and the number of lodgers fully paid for
  - iii. 25% of the venue rental fees
- c. These limits include any applicable taxes and service charges. No other cancelation policy or liability shall be effective if the Commonwealth exercises this option.

**\* When used: For use in solicitations where the timely need for the goods or services could be affected due to a declared emergency or emergency office closings. Such events could involve conferences, lodging, or catering. Percentages or categories could be modified according to the needs of the procurement.**

