

Participating Addendum Number CTR022773
for
HEAVY CONSTRUCTION & INDUSTRIAL EQUIPMENT
between
COMMONWEALTH OF VIRGINIA
and
CLARK EQUIPMENT COMPANY

This Participating Addendum is entered into by Commonwealth of Virginia ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number OK-SW-192-300, executed by Contractor and the State of Oklahoma for Heavy Construction & Industrial Equipment ("Master Agreement"):

Clark Equipment Company ("Contractor")
250 East Beaton Drive
West Fargo, ND 58078

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Randy Fuss
Director – Government Accounts
Randy.Fuss@doosan.com
701-241-8746

Participating Entity's contact for this Participating Addendum is:

Tracy Wrenn
Statewide Sourcing & Contracting Officer
Tracy.Wrenn@dgs.virginia.gov
804-786-5410

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or 07/10/2023, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.
- a. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - b. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum
 - c.** Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms

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set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY MODIFICATIONS AND ADDITIONS TO THE MASTER AGREEMENT

- ☐ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.
- ☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions set forth in this addendum , and on Attachment A, Commonwealth of Virginia General Terms and Conditions.**

VIII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT (SCA) FEE.

a. SURCHARGE ADJUSTMENT FEE:

Contractor shall pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Contract. **DGS will not issue invoices or statements.** The Contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:
DGS/Division of Purchases and Supply
ATTN: VSSI Coordinator
PO Box 1199
Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Reports shall be sent to the DPS Contracting Officer at tracy.wrenn@dgs.virginia.gov and to the following email address: vssireport@dgs.virginia.gov. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in cancellation of the Contract.

b. REPORTING AND PAYMENT SCHEDULES:

<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Payment Due</u>
1st Quarter	Jan, Feb, Mar	April 30th
2nd Quarter	Apr, May, June	July 31st
3rd Quarter	July, Aug, Sept	October 31st
4th Quarter	Oct, Nov, Dec	January 31 st

Contractor shall:

1. Meet or conference call at least quarterly with the DPS Contracting Officer to review performance, usage under the Contract, and discuss opportunities for improvements.
2. Provide any documentation or reports as requested by the DPS Contracting Officer.
3. Notify the DPS Contracting Officer, in writing, of any unresolved disputes or problems that have been outstanding for more than thirty (30) days.

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IX. ATTACHMENTS. This Participating Addendum includes the following attachments:

- a. Attachment A: Commonwealth of Virginia General Terms and Conditions

X. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Randy Fuss
Director – Government Accounts
Randy.Fuss@doosan.com
701-241-8746

For Participating Entity:

Tracy Wrenn
Statewide Sourcing & Contracting Officer
Tracy.Wrenn@dgs.virginia.gov
804-786-5410

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CLARK EQUIPMENT COMPANY:

Randy L. Fuss
Signature

Randy L. Fuss

Printed Name

Director, Government Accounts

Title

02/13/2024

Date

COMMONWEALTH OF VIRGINIA:

Tracy Wrenn, VCO
Signature

Tracy Wrenn

Printed Name

Statewide Sourcing & Contracting Officer

Title

2/14/2024

Date

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Attachment A

Commonwealth of Virginia

General Terms and Conditions

1. **VENDORS MANUAL:** This Participating Addendum is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this Participating Addendum in their entirety. The process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "I Sell To Virginia".
2. **VIRGINIA PUBLIC PROCUREMENT ACT:** The Virginia Public Procurement Act ("VPPA", §2.2-4300 et seq. of the Code of Virginia), including Article 6 (Ethics in Public Contracting), shall apply to any Participating Addendum entered into between the Contractor and a Virginia public entity under the Master Agreement.
3. **APPLICABLE LAWS AND COURTS:** This Participating Addendum shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from execution of the Participating Addendum 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.
4. **ANTI-DISCRIMINATION:** By signing this Participating Addendum, the Contractor certifies 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 was made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Participating Addendum 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 sexual orientation, gender identity, 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).
 1. During the performance of this Participating Addendum, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the Participating Addendum. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this Participating Addendum for breach, or at its option, the whole Participating Addendum. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific Participating Addendum is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Participating Addendum.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
5. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that they have not engaged in collusion or fraud in relation to any aspect of this Participating Addendum or its Master Agreement with the lead State or other entity that conducted the procurement upon which this Participating Addendum is based and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with this Participating Addendum or procurement. The Contractor also certifies it has 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.
6. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this written Participating Addendum with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the Participating Addendum for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
7. **DEBARMENT STATUS:** By signing this Participating Addendum, 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.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

8. **ANTITRUST:** By entering into a Participating Addendum, 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 Participating Addendum.

9. **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. 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 Participating Addendum or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the Master Agreement 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 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 resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. 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. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor Participating Addendum is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the Participating Addendum; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Master Agreement) 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 Master Agreement. 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 Participating Addendum 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.
10. **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*, and *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.
11. **ASSIGNMENT OF PARTICIPATING ADDENDUM:** The Participating Addendum shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
12. **CHANGES TO THE PARTICIPATING ADDENDUM:** Changes can be made to the Participating Addendum in any of the following ways:
 1. The parties may agree in writing to modify the terms, conditions, or scope of the Participating Addendum. Any additional goods or services to be provided shall be of a sort that is ancillary to the Master Agreement 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 Participating Addendum at any time by written notice to the contractor. Changes within the scope of the Participating Addendum 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:

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- 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 Master Agreement, 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 Master Agreement. 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 Participating Addendum 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 Participating Addendum shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the Participating Addendum generally.

13. **DEFAULT:** In case of failure to deliver goods or services in accordance with the Master Agreement's and this Participating Addendum terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

14. **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 Participating Addendum shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the Participating Addendum are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

15. **INSURANCE:** The Contractor certifies that it will have the following insurance coverage at the time the Participating Addendum is executed. 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 Contractor further certifies that they and any subcontractors will maintain these insurance coverages during the entire term of the Participating Addendum and that all coverage will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

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 Participating Addendum 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 shall be added as an additional insured to the policy by an endorsement.
 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 Participating Addendum. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)
16. **DRUG-FREE WORKPLACE:** During the performance of the Participating Addendum, 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 the Master Agreement 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 Participating Addendum

17. **NONDISCRIMINATION OF CONTRACTORS:** A Contractor shall not be discriminated against in this Participating Addendum because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Contractor employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on this specific Participating Addendum is not in its best interest. If the award of the Master Agreement was made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Participating Addendum 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.

18. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All contractors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this Participating Addendum with the eVA transaction fee specified above assessed for each order.

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

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

19. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Commonwealth shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this Participating Addendum.

20. **PRICE CURRENCY:** All prices shall be in US dollars.

21. **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.

22. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of

communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

23. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this Participating Addendum 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.
24. **CANCELLATION OF PARTICIPATING ADDENDUM:** The Commonwealth reserves the right to cancel and terminate any resulting Participating Addendum, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial Participating Addendum period is for more than 12 months, the resulting Participating Addendum may also be terminated by the contractor, without penalty, after the initial 12 months of the Participating Addendum period upon 60 days written notice to the other party. Any Participating Addendum 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.
25. **eVA ORDERS AND PARTICIPATING ADDENDUM:** It is anticipated that the Participating Addendum will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee assessed for each order. Purchasing Entities **must** order goods and/or services available from the Participating Addendum by issuing an order through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>.
- 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 Participating Addendum 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 Participating Addendum for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.
26. **RENEWAL OF PARTICIPATING ADDENDUM:** The Participating Addendum shall follow the Term of the Master Agreement and a renewal of the Master Agreement shall be considered a renewal of this Participating Addendum as well.
27. **MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC):** Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services.

Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at

Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Vendor Tax ID

Level 3 - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 **optional** data which is considered "Superior Data", the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

28. **ORDERS:** Authorized Users must order goods available from the Participating Addendum by issuing an eVA purchase order through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>.
29. **PERIOD FOR PERFORMANCE OF PURCHASE ORDERS:** To be valid, a purchase order issued under this Participating Addendum must be issued during the term of the Participating Addendum. The period specified for performance of the purchase order may extend past the term of the Participating Addendum. If a notice terminating this Participating Addendum is issued, the notice shall be construed as applying only to the Participating Addendum and not to any existing purchase order, unless the notice expressly states the intent to terminate the purchase order.
30. **LOBBYING AND INTEGRITY:** Contractor shall not, in connection with this or any other agreement with the Commonwealth of Virginia, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Commonwealth of Virginia officer's 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 Contractor shall provide any type of information deemed relevant to the Contractor's integrity or responsibility to provide the services or goods, described in the Master Agreement.
31. **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. No contractor shall be required to sign, from any employee or agent of the Commonwealth or Authorized Users, any additional agreements, contracts, or other documents that were not part of the original Participating

Addendum. Any documents signed by persons other than the Director of DPS or their authorized designee shall have no validity or effect upon the Participating Addendum.

32. **CONTRACTUAL DISPUTES:** In accordance with Code of Virginia § 2.2-4363, contractual claims, whether for money or other relief, shall be submitted in writing to the DPS Contracting Officer no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to the DPS Contracting Officer at the time of the occurrence. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

- a. The Contractor may not invoke any available administrative procedure under Code of Virginia § 2.2-4365 nor institute legal action prior to receipt of the Commonwealth's decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code of Virginia § 2.2-4364 or the administrative procedure authorized by Code of Virginia § 2.2-4365.
- b. The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the contracting and Ordering Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.
- c. In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any services hereunder.

33. **DELIVERY/SERVICE TO CORRECTIONAL INSTITUTIONS:**

The Contractor shall be responsible for adherence to the following guidelines as they pertain to delivering goods and/or providing services to correctional institutions, especially if the location is within the secured perimeter:

- a. The Contractor shall be responsible for ensuring that all personnel connected with the work comply with the rules and regulations of each ordering institution, which may reach beyond the scope of this specification.
- b. The Contractor shall maintain proper security and control over all personnel, equipment, tools, and materials at all times. The Contractor's equipment and personnel shall be subject to security checks and associated delays therefrom.
- c. There shall be no verbal discussion or physical contact between the Contractor's employees and offenders.
- d. Anyone bringing any offender any item, such as (but not limited to) weapons, tools, food, drink, clothing, cigarettes, matches, correspondence, printed or electronic media, or assisting offenders to escape is in violation of Commonwealth law and may be prosecuted to the fullest extent of the law.
- e. No weapons, alcohol, drugs, or medication of any type will be allowed on Commonwealth property.

- f. Keys shall be removed from all vehicles and other mobile equipment when not in operation. Vehicle doors and tool compartments shall be locked at all times when not in use. Ladders left on vehicles shall be chained and locked at all times.
 - g. Any tools, especially cutting tools, if left unattended, will be confiscated.
 - h. All security regulations shall be observed at all times. These will be made known to the Contractor and his representatives by the Institutional Security Chief, or his designee, at the point of entrance to the institution.
 - i. All persons entering the prison complex are subject to search.
 - j. Contractors and their representatives are limited to movement to and from, and within, the immediate area of their work.
 - k. An institutional employee may be designated as a liaison between the Contractor and institution. Unless otherwise stated this person will be the Department Superintendent for whom the Contractor is performing the service or delivering the goods.
 - l. Vehicles may not be permitted to leave the facility until after the daily or routine security check has been performed.
 - m. All Contractor employees shall have valid identification with photograph at all times for identification. Validity of identification is determined solely at the discretion of the institution. A valid government-issued driver's license is generally acceptable. No persons will be permitted to enter the institution without valid identification.
 - n. The institution reserves the right to refuse entrance to anyone who appears, in the institution's sole judgment, to be under the influence of drugs or alcohol, or otherwise impaired.
34. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this Participating Addendum and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this Participating Addendum 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.
35. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Commonwealth. In the event that the contractor desires to subcontract some part of the work specified in the Participating Addendum, the contractor shall furnish the Commonwealth 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 Participating Addendum.
36. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this Participating Addendum shall be repaired to the Commonwealth's satisfaction at the contractor's expense.
37. **ORDERS:** Any orders placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

38. INVOICES AND PAYMENT

a. INVOICES:

Contractor shall submit the invoice(s) to the address designated on the purchase order following acceptance by the Authorized User of goods and services rendered. No invoice may include any cost other than those identified in the purchase order referencing the Contract. Invoice(s) shall provide at a minimum:

1. Name of Authorized User (the ordering entity)
2. Authorized User point of contact and phone/email
3. Description of the goods and/or services provided
4. Contract number
5. Purchase order number
6. Invoice number
7. Invoice date
8. Invoice amount

b. PAYMENT:

Payment will be made in accordance with the Virginia Prompt Payment Act. State Agencies will pay per §2.2-4350 of the Virginia Prompt Payment Act. Localities will pay per §2.2-4352 of the Virginia Prompt Payment Act. Payments will only be remitted after the receipt of valid invoice and verification of satisfactory goods received and/or completion of work. Payment may be made via a small purchase charge card (SPCC) (refer to the Mandatory Acceptance of Small Purchase Charge Card (SPCC) term and condition), check or EDI depending on how the Contractor is registered with the Department of Accounts. Utilization of the SPCC for payment shall not result in any additional fees (transaction fee, service charge etc.).