

FAUQUIER COUNTY GOVERNMENT
PROCUREMENT DIVISION
320 Hospital Drive Ste. 23
Warrenton, Virginia 20186
Phone: (540) 422-8350 Fax: (540) 422-8355

NOTICE OF CONTRACT AWARD

1. DATE: October 28, 2024

2. COMMODITY NAME: Ground Maintenance Equipment

3. CONTRACT NUMBER: 25-070-C-R (Riding EVA CTR006026)
- 4.
5. CONTRACT PERIOD: October 23, 2024, through February 27, 2025

6. RENEWAL OPTIONS: No Renewals

7. CONTRACTORS: The Toro Company
 8111 Lyndale Ave S
 Bloomington, MN 55420
 Phone: 540-341-4141—Hamilton Equipment

8. TERMS: Net 45 days
 F.O.B. Destination

9. FOR FURTHER INFORMATION CONTACT: Jeffrey Campbell, VCA, VCO
 Procurement Officer III
 PH (540) 422-8350
 jeffrey.campbell@fauquiercounty.gov

10. NOTICE TO ALL FAUQUIER COUNTY GOVERNMENT USING DEPARTMENTS: This contract is the result of a competitive bid program, and its use must follow the FCG Procurement Policy/Procedures for the purchase of the commodities listed herein. Please see the reverse side of this notice for further instructions regarding this contract.

INSTRUCTIONS

1. Orders: All FCG Using Departments must order services listed by issuing FCG Purchase Orders per FCG Procurement Procedures Manual. An extra copy of the Procedures Manual can be obtained by calling Procurement at (540) 422-8351 or 8352.
2. The applicable contract number, vendor number, item description and price per each, total dollar amount, contact person with phone number, and billing/delivery address must be shown on each purchase order for Finance & Contractor use.
3. Inspection on delivery and/or completion of services, as well as approval of contractor's invoice is the responsibility of the receiving using department.
4. Any complaint as to quality of goods or services, faulty or delinquent delivery, or violation of contract provisions by contractor shall be reported to FCG Procurement for handling with the Contractor. All complaints must be submitted in writing and can be forwarded to Procurement via email, or courier.
5. Renewals: As stated on the face of this notice. There are zero renewals available on this contract by written mutual agreement between all parties.

FAUQUIER COUNTY GOVERNMENT
a political subdivision of the Commonwealth of Virginia
Contract # 59-25ajc
(Riding EVA CTR006026) **The Toro Company**

This Agreement is made and entered into this 23 day of ~~September~~ ^{October} 2024, by the Fauquier County Government, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as "Owner") and **The Toro Company**, having its principal place of business at 8111 Lyndale Ave S., Bloomington, MN 55420, hereinafter referred to as "Contractor".

WITNESSETH that the Contractor and the Owner, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide Grounds Maintenance Equipment.

COMPENSATION: The Owner will pay, and the Contractor will accept in full consideration for the performance during the contract term "pricing as negotiated and attached".

CONTRACT PERIOD: Date of execution through February 27, 2025, without the option to renew, at the mutual agreement of both parties.

The contract documents shall consist of **and for the purpose of resolving ambiguity or conflicts shall be interpreted in the following order of priority**

- (1) This signed form;
- (2) Fauquier County General Terms & Conditions;
- (3) RFP #377, including Addendums 1-3, and the NASPO Portfolio; and
- (4) The NASPO Value Point Contract through the Commonwealth of Virginia, dated May 15, 2020, all which documents are incorporated herein.

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

The Toro Company

By: 
Ryan Miller

Title: Government Contract Manager

Date: October 22, 2024

Fauquier County Government
a political subdivision of the Commonwealth
of Virginia

By: 
Kristen Hylton

Title: Procurement Manager

Date: 10.23.2024



GENERAL TERMS, CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS

Revised 08/05/2021

Vendor: These general rules and conditions shall apply to all purchases and be a part of each solicitation and every contract awarded by the Procurement Division, unless otherwise specified. The Procurement Division is responsible for the purchasing activity of Fauquier County, which is comprised of the Fauquier County Board of Supervisors, a body politic and political subdivision of the Commonwealth of Virginia, and the Constitutional Officers of Fauquier County, Virginia, and the Fauquier County School Board, a body corporate. The term "Owner" as used herein refers to the contracting entity which is the signatory on the contract and may be either Fauquier County or the Fauquier County School Board, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/Offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, bids/proposals on all solicitations issued by the Procurement Division will bind bidders/Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

- 1. AUTHORITY**-Except as delegated in the Procurement Procedures Manual, the Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the Owner. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the Purchasing Agent, no other Owner officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the Owner for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Owner shall not be bound thereby.
- 2. COMPETITION INTENDED:** It is the Owner's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

- 3. CLARIFICATION OF TERMS:** Unless otherwise specified, if any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the Buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.
- 4. MANDATORY USE OF OWNER FORMS AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official Owner forms provided for that purpose shall be a cause for rejection of the bid/proposal. Unauthorized modification of or additions to any portion of the Invitation to Bid or Request for Proposal may be cause for rejection of the bid/proposal. However, the Owner reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any bid or proposal which has been modified.
- 5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/modification. The Owner is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Procurement Division by the designated date and hour.

 - The official time used in the receipt of bids/proposals is that time stamp within the Bonfire Portal.
 - Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
 - If the Owner closes its offices due to inclement weather or other unforeseen emergency scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- 6. WITHDRAWAL OF BIDS/PROPOSALS:**

A Bidder/Offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

 - Bids/Proposals may be withdrawn on written request from the Bidder/Offeror received at the address shown in the solicitation prior to the time of acceptance.
 - Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Owner may exercise its right of collection.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid/Proposal of the same bidder/Offeror or of another bidder/Offeror in which the ownership of the withdrawing bidder/Offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/Offeror that is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.
- 7. ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/Offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror. Bidders/Offeror's are cautioned to recheck their bids/proposals for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
- 8. IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

ADDRESSED AS INDICATED ON PAGE 1

IFB/RFP NUMBER
TITLE
BID/PROPOSAL DUE DATE AND TIME
VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeree takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeree. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
10. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part.
11. **BIDDERS PRESENT:** At the time fixed for the opening of responses to a bid, bid contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly. Bid tabulations are posted on the Procurement Division's Bulletin Board for a minimum of 10 days from award date. At the time fixed for the receipt of responses for Request for Proposals, only the names of the Offerors will be read and made available to the public.
12. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the Owner's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Owner's Bidders List.
13. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
14. **TAX EXEMPTION:** The Owner is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeree.
15. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerees certify that they are not currently debarred from submitting bids/proposals on contracts by the Owner, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by the Owner or any agency, public entity/locality or authority of the Commonwealth of Virginia.
16. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in *Code of Virginia* §§ 2.2-4367 through 2.2-4377 (the Virginia Public Procurement Act), as amended from time to time, shall be applicable to all contracts solicited or entered into by the Owner. By submitting their bids/proposals, all Bidders/Offerees certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
17. **NO CONTACT POLICY:** No Bidder/Offeree shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the Procurement Division, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeree with any Owner representative, other than the Procurement Division, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeree from this procurement process.
18. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (*Code of Virginia* § 2.2-3700 *et. seq.*) and § 2.2-4342 of the Virginia Public Procurement Act except as provided below:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of bids but prior to award, except in the event that the Owner decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Owner decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information and Virginia Public Procurement Acts; however, the bidder, Offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the Owner, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the Owner.
19. **CONFLICT OF INTEREST:** Contractor certifies by signing bid to the Owner that no conflict of interest exists between Contractor and Owner that interferes with fair competition and no conflict of interest exists between Contractor and any other person or organization that constitutes a conflict of interest with respect to the contract with the Owner.

SPECIFICATIONS

20. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Owner

in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Owner to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

21. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
22. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeree shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. **CONDITION OF ITEMS:** Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

24. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Owner to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose proposal is determined, in writing, to be the most advantageous to the Owner taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Owner. Award may be made to as many bidders/Offeror's as deemed necessary to fulfill the anticipated requirements of the Owner. The Purchasing Agent also reserves the right to reject the bid if a bidder is deemed to be a non-responsible bidder.
25. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a contract as a result of this solicitation, the Procurement Division will publicly post such notice on the Procurement Website at <http://www.fauquiercounty.gov/government/departments-h-z/procurement>
26. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. The Owner further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy the Owner that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
27. **TIE BIDS:** In the case of a tie bid, the Owner may give preference to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to *Code of Virginia* § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

CONTRACT PROVISIONS

28. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed and construed in all respects by the laws of Virginia, and any litigation with respect thereto shall only be brought in the appropriate General District or Circuit Court of Fauquier County, Virginia. The Contractor shall comply with all applicable federal, state and local laws and regulations.
29. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of the 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 Owner under said contract. This includes, but is not limited to, overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under United States' or the Commonwealth's antitrust laws. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for antitrust violations.
30. **INVOICING AND PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.
 - a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 - b. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
 - c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
 - d. The Owner's fiscal year is July 1 - June 30. Contractors must submit invoices, especially for goods and/or services provided in the month of JUNE, for the entire month i.e. June 1 - June 30, so that expenses are recognized in the appropriate fiscal year.
 - e. Any payment made by the Contractor to the Owner shall only be made in U.S. Dollars. If payment is received in foreign currency the Owner may, in its sole discretion, reject such payment and require immediate compensation in U.S. Dollars.
31. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the Owner and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month compounded monthly (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Owner, except for amounts withheld as stated in 2 above. The date of mailing of any payment by postage prepaid U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.

32. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.
33. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Owner, 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 another remedies which the Owner may have.
34. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offeror's certify to the Owner 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, the Virginia Human Rights Act (*Code of Virginia* § 2.2-3900 *et seq.*) and § 2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1(E)).

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

- a. During the performance of this contract, the Contractor agrees as follows:
- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) 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.
 - 3) 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.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
35. **CHANGES TO THE CONTRACT:** Changes can only be made to the contract in one of the following ways:
- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.
 - 1) By mutual agreement between the parties in writing; or
 - 2) By agreeing in writing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner 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 Procurement Division within thirty (30) days from the date of receipt of the written order from the Procurement Division. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.
 - c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors or the School Board, as applicable.
- 36.. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless the Owner, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Owner in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the Owner in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner as herein provided.
37. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

38. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the Owner upon thirty (30) days advance 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.
- Termination for Convenience:** In the event that the contract is terminated upon request and for the convenience of the Owner, without the required thirty (30) days advance notice, then the Owner shall be responsible for payment of services up to the termination date.
 - Termination for Cause:** Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default provision of these General Conditions, the Owner may hold the contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
 - Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled without any liability or penalty to Owner.

39. USE OF CONTRACT BY OTHER PUBLIC BODIES: Except as prohibited by the current *Code of Virginia*, all resultant contracts will be extended, with the authorization of the Contractor, to other public bodies of the Commonwealth of Virginia and all currently active members of the Metropolitan-Washington Council of Governments (MWCOG) or, Mid-Atlantic Purchasing Team, to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor must deal directly with that public body concerning the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. Fauquier County acts only as the “Contracting Agent” for these public bodies. Any resulting contract with other public bodies shall be governed by the laws of that specific entity. It is the Contractor’s responsibility to notify the public bodies of the availability of the contract. Fauquier County shall not be held liable for any costs or damage incurred by another public body as a result of any award extended to that public body by the Contractor.

40. **AUDIT:** The Contractor hereby agrees to retain all books, records and other documents relative to this contract for five years after final payment, or until audited by the Owner, whichever is sooner. The agency, its authorized agents, and/or Owner auditors shall have full access to and right to examine any of said materials during said period.
41. **SEX OFFENDER REGISTRY NOTIFICATION:** The Contractor shall not employ on school property any employee who is a registered sex offender and shall enforce the same restriction upon all sub-contractors and agents of Contractor. Prior to starting work and quarterly during performance of the work, the Contractor shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of Contractor and Sub-Contractors who are employed on school property by the Contractor or Sub-Contractor. The Contractor shall furnish the Owner with evidence verifying compliance with the services.

Prior to starting work on-site, the Contractor shall submit a completed Fauquier County Public Schools “CERTIFICATION OF NO CRIMES AGAINST CHILDREN” form, a copy of which is included in this solicitation.

42. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND FEDERAL IMMIGRATION LAW:** During the term of any contract, the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
43. **ASBESTOS NOTIFICATION:** As required by the Environmental Protection Agency Asbestos Hazard Emergency Response Act 40 CFR, subpart E, 763.93, information regarding asbestos inspections, response actions, and post response activities is on file in a full asbestos report located in the main office of each school. Contractors bear full responsibility to review this material prior to commencing any activity at a school site.
44. **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 of the *Code of Virginia*, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract is voidable at the option of Owner.
45. **ADA WEBSITE-RELATED ACCESSIBILITY:** Any Contractor who performs services, designs, develops content, maintains or otherwise bears responsibility for the content and format of Owner’s website(s) or third-party programs accessed through Owner’s website(s), acknowledges receipt of, and responsibility to implement the accessibility standards found in the U.S. Department of Justice publication entitled “Accessibility of State and Local Government Websites to People with Disabilities,” available at www.ada.gov/websites2.htm or, as attached directly to the solicitation. Contractor services as noted, shall conform to § 508 of Title III of the Americans with Disabilities Act (ADA) and the World Wide Web Consortium’s (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA), most current versions, in addition to the Owner’s web accessibility policy.

DELIVERY PROVISION

46. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor’s name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 2:30 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
47. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Owner may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. **INSPECTIONS:** The Owner reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Owner will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Owner for such materials or supplies as are not in accordance with the specifications.
49. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Division when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Division, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Owner, there shall be added to the time of completion a time equal to the period of such delay caused by the Owner. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
50. **POINT OF DESTINATION:** All materials shipped to the Owner must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
51. **REPLACEMENT:** Materials or components that have been rejected by the Procurement Division, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the Owner.
52. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number,
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/CONTRACTOR REMEDIES

53. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror who desires to protest the award or decision to award a contract, by either Fauquier County or the Fauquier County School Board, shall submit such protest in writing to the County Administrator (if the award or decision to award was made by Fauquier County) or the Superintendent of Schools (if the award or decision to award was made by the Fauquier County School Board), no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator or the Superintendent of Schools, as the case may be, shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/Offeror appeals within ten (10) days of the written decision by instituting legal action as provided in § VIII.H.3 of the County's Procurement Policy. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the solicitation.
- 54.. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Superintendent of Schools (if the claim is against the Fauquier County School Board) or the County Administrator (if the claim is against Fauquier County) no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the School Board (if the claim is against the Fauquier County School Board) or the County Board of Supervisors (if the claim is against Fauquier County) within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of the School Board or Board of Supervisors (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the School Board or Board of Supervisors (as applicable) shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in *Code of Virginia* § 2.2-4364. Failure of the School Board or Board of Supervisors to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the School Board or Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to *Code of Virginia* § 2.2-4365 has been established for contractual claims under this contract.



COMMONWEALTH of VIRGINIA

DIVISION OF PURCHASES and SUPPLY
1111 EAST BROAD STREET, 6th FLOOR, RECEPTIONIST/BID RECEIVING, RICHMOND, VA 23219

REQUEST FOR PROPOSAL (RFP) # 377
Grounds Maintenance Equipment
NIGP Commodity Codes: 51500, 02000

Issue Date: June 28, 2019 • Due Date/Time: August 21, 2019 at 1:00PM EST
PROPOSALS RECEIVED AFTER THE DUE DATE AND TIME WILL NOT BE CONSIDERED
PROPOSALS WILL NOT BE ACCEPTED BY FAX OR EMAIL

DPS Statewide Sourcing & Contracting Officer: Danielle Keeton, CPPB, VCO, VCA
E-Mail: Danielle.keeton@dgs.virginia.gov

USING AGENCIES : All Commonwealth of Virginia agencies, institutions of higher education, or other public bodies as defined in Code of Virginia §2.2-4301, to include private institutions of higher education chartered in Virginia as defined in Code of Virginia §2.2-1120, NASPO ValuePoint Participating Entities, and any other public bodies which may be added through participating addendum to any Agreement.

PRE-PROPOSAL CONFERENCE: An Optional Pre-proposal Conference will be held at 2:00 Eastern Daylight Time on July 23, 2019, at the Patrick Henry Building, 1111 East Broad Street, Room 1023, Richmond, VA 23219. Potential offerors who intend to submit a proposal are encouraged to attend in person or via teleconference. Any changes to the RFP will be issued in an amendment, which must be signed and included in the offeror's proposal. Refer to Section IX for information.

CLARIFICATION OF RFP: It is the Offeror's sole responsibility to 1) Contact DPS Statewide Sourcing & Contracting Officer, Danielle Keeton at Danielle.keeton@dgs.virginia.gov in writing with questions about the specifications or other solicitation documents no later than 5:00 PM Eastern Daylight Time on August 6, 2019. Verbal requests for information will not be accepted. Any revisions to the solicitation will be made only by amendment; and 2) Obtain all current information (i.e., amendments, notifications, extensions, changes, cancellation, or awards) from the eVA website <http://www.eva.virginia.gov> and clicking on "Business Opportunities."

PERIOD OF CONTRACT: Three (3) year initial term, with up to two (2) additional one-year renewal options.

AWARD POSTING: Upon the award or announcement of a notice to award a Contract as a result of this solicitation, the Commonwealth of Virginia through the Department of General Services, Division of Purchases and Supply, will publicly post such notice online at <http://www.eva.virginia.gov> for a minimum of ten (10) calendar days. Contracts will be awarded to eVA registered vendors only.

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

Company Name: _____

Address: _____

City/State/ZIP: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Email: _____

Telephone: _____

Fax: _____

Cell: _____

DUNS Number: _____

eVA Vendor ID: _____

Vendor SCC ID: _____

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that request for proposal.

RETURN OF THIS PAGE IS REQUIRED

**GROUNDS MAINTENANCE
EQUIPMENT RFP# 377**

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I. DEFINITIONS

The following definitions apply to this solicitation. Additionally, [Attachment A](#) contains definitions of terms used in the NASPO ValuePoint Master Agreement Terms and Conditions and in this solicitation.

- **Authorized Users** - All Commonwealth state agencies, institutions of higher education, and other public bodies and entities authorized to use the Master Agreement, pursuant to §§ 2.2-4301 and 2.2-4304 of the Code of Virginia, including private institutions of higher education chartered in Virginia as defined in Code of Virginia §2.2-1120 and granted tax-exempt status under Internal Revenue Code §501(c)(3); and NASPO ValuePoint Participating State governments (i.e., departments, agencies, institutions, etc.) institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the U.S., and other eligible entities subject to approval of the individual state procurement official and compliance with local statutory and regulatory provisions.
- **Contractor** - person or entity delivering products or performing services under all contractual provisions stipulated under any Master Agreement(s) resulting from this RFP.
- **Department of Small Business and Supplier Diversity (DSBSD)** - Commonwealth of Virginia agency dedicated to enhancing the participation of small, women and minority-owned businesses in Virginia's procurement process.
- **eVA** - Commonwealth of Virginia's Internet electronic procurement solution website portal <http://www.eva.virginia.gov> that streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with Commonwealth of Virginia state agencies and public bodies. Reference Attachment B Item X entitled "*eVA Business-To-Government Vendor Registration, Contracts, and Orders*" for important information on eVA. Obtain more information on eVA at www.eva.virginia.gov and click on "I Sell to Virginia".
- **Hot List Program (or Equivalent) Pricing** – Contractor's list of discounted, liquidated close-out or discontinued equipment or products. This list may include promotional prices.
- **Lead State** - state that a) develops and issues the Request for Proposal (RFP); b) centrally manages the sourcing and negotiation process; c) awards the resulting contract(s), if any, which result from the sourcing process, and; d) manages or administers any resulting contract(s) thereafter, over the full term/s of any agreement(s). In this procurement, the Lead State is the Commonwealth of Virginia and all questions, comments, or any other communication regarding this RFP shall be directed solely to the DPS Statewide Sourcing & Contracting Officer named on the face of this solicitation.
- **Master Ordering Agreement or Master Agreement** - underlying agreement executed by and between the Commonwealth, acting on behalf of NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
- **NASPO ValuePoint** - NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school

districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia.

- **OEM** – Original Equipment Manufacturer
- **Offeror** - the company or firm submitting a proposal in response to this RFP.
- **Order or Purchase Order** - any eVA order, purchase order, sales order, contract, or other document used by a Participating Entity to order the products and services on the Master Agreement.
- **Participating Addendum** - bilateral agreement executed by a contractor and a Participating Entity, which incorporates a Master Agreement resulting from this solicitation, and any other additional Participating Entity-specific language or any other requirements (e.g., ordering procedures, other terms and conditions, or other business practices that are specific to the Participating Entity).
- **Participating Entity** - a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- **Participating State** - any state, the District of Columbia, or any of the territories of the U.S. that are listed in the RFP as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.
- **Proposal** - official written proposal submitted by an Offeror in response to this Request for Proposal.
- **Purchasing Entity** - a state, city, county, district, other political subdivision of a state, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- **Request for Proposal or "RFP"** - the entire solicitation document, including all parts, sections, exhibits, attachments, and amendments.
- **Small Business** - a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business. (Code of Virginia, § 2.2-4310)
- **Sourcing Team** - a group comprised of subject matter experts and procurement experts from Participating Entities that are most likely to use any resulting Master Agreement(s).

II. PURPOSE

The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS") is issuing this formal request for sealed proposal ("RFP") #E194-377 to establish one or more Master Ordering Agreements ("Master Agreement" or "Contract" or "Agreement") through competitive negotiation with experienced qualified OEMs for GROUNDS MAINTENANCE EQUIPMENT and services. Offerors shall be able to provide the specific equipment listed on a brand name or equivalent basis through their designated or authorized distribution network to the Commonwealth of Virginia and NASPO ValuePoint Participating States. The initial term of the Agreement will be three (3) years with two (2) additional one-year renewal options.

Any Contract resulting from the RFP will be an optional use Agreement established and managed by the Commonwealth of Virginia as the Lead State. Products and services ordered from any contract awarded through this solicitation will be available on an “as-needed” basis under the same cost and terms and conditions agreed to in the Master Agreement.

III. BACKGROUND – NASPO VALUEPOINT

- A. NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint.

NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information, consult the following websites www.naspovaluepoint.org and www.naspo.org

- B. Participating States: In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement(s):

List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, and Vermont

Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States’ terms and conditions. The Participating States shall negotiate these terms and conditions directly with the Contractor.

IV. LEAD STATE, SOLICITATION NUMBER AND CONTRACT ADMINISTRATOR

The Commonwealth of Virginia is the Lead State and issuing office for this solicitation and all subsequent amendments relating to it. The solicitation reference number is RFP# E194-377. This number must be referenced on all proposals, correspondence, and documentation relating to the RFP.

An Offeror and any interested persons shall direct all questions **in writing**, concerning the procurement process to the DPS Statewide Sourcing & Contracting Officer including all technical requirements of the RFP, contractual requirements, requests for approval, change, clarification, the award process, and any other questions arising from this solicitation, and any resulting Master Agreement(s), if any. The Commonwealth’s DPS Statewide Sourcing & Contracting Officer, identified below, is the Lead State Contract Administrator and single-point-of-contact during the entire procurement process and for any resulting contracts.

Danielle Keeton, CPPB, VCO, VCA
DPS Statewide Sourcing & Contracting
Officer Commonwealth of Virginia
Department of General Services, Division of Purchases and Supply
1111 East Broad Street
Richmond, VA 23219
Email: Danielle.Keeton@dgs.virginia.gov
Phone: 804-225-2498

V. STATEMENT OF NEEDS

The objective of this solicitation is to obtain the lowest cost based on a pricing structure of a firm percentage off the most Current Price/Product List. This solicitation will establish multi-state Master Agreements to be utilized by the Commonwealth of Virginia and NASPO ValuePoint Participating States. The award of multiple Master Agreements with OEMs will greatly reduce administrative costs to Authorized Users resulting in additional savings for all who procure grounds maintenance equipment.

In anticipation of high volume purchasing, it is expected that all resulting contracts will offer the most attractive discounts available. In addition, multi-unit discounts are encouraged as a value-added component of the pricing structure.

This RFP is designed to provide an interested Offeror with sufficient information to submit a proposal meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offeror is encouraged to expand upon the specifications to add service and value consistent with Participating States requirements; therefore, any submitted proposal should:

1. Be fully complete;
2. Be comprised of leading edge business processes and practices;
3. Be demonstrably more effective and efficient than any current statewide processes; and
4. Consist of extremely aggressive pricing.

Historical Sales for the current contracts are shown below:

Total sales for the period of 2013 through the first quarter of 2019 were \$57,768,149.

Resulting contracts represent significant sales opportunities; however, no minimum or maximum level of sales volume for any awarded contracts is guaranteed or implied nor is there a guarantee of the number of individual Purchase Orders which might be issued nor the dollar amount of any individual Purchase Order or charge card purchases or their aggregate amount.

A. General Requirements

The Commonwealth desires a single source of responsibility with an OEM offering a broad scope of equipment for any resulting contracts. Only OEMs with dealer networks in all states and territories are encouraged to submit a proposal, as this will be a multiple award contract for both new equipment and warranty work with replacement parts, therefore a dealer network is required for complete coverage of all states and territories of the United States. Proposals submitted by dealers/distributors on behalf of a manufacturer will not be accepted. Offeror shall provide a complete listing of all dealers/distributors within the U.S. and U.S. Territories with their proposal response. After award, each Participating State will have an opportunity to have a listing of the dealers/distributors located within their State included in their Participating Addendum.

B. Equipment

1. Equipment offered under the Contract shall be new and current models with the exception of any products offered on a Contractor's Hot List. All equipment shall comply with any current applicable safety or regulatory standards or codes.
2. Contractor may request to delete products as needed and add new products as soon as they are available to dealers/distributors so there is no delay in products being readily available to Authorized Users. All requests must be approved by the Contracting Officer.

3. Contractor must immediately notify Authorized User when they order an obsolete or out of stock product and of any equivalent substitutes. Substitutions are not permitted unless agreed upon in writing by the Authorized User and must be at the same or increased discount of percentage based on the contract award.
4. Contractor shall provide with equipment, an operations and maintenance manual with wiring diagrams and parts list. The manual may be in electronic format.
5. Grounds Maintenance Equipment is not considered to include the following:
 - a. Heavy construction equipment
 - b. Skid steers or mini-excavators
 - c. Trailers
 - d. Aerial lifts or bucket trucks
6. Non-contract or allied equipment will be permitted to be procured at the same time as contract equipment to allow for the contract equipment to operate within safety guidelines (e.g., federal, state, agency) or to function as needed. The addition of the non-contract or allied equipment will complete or enhance the operation or provide an additional level of safe operation of the contract equipment. Non-contract or allied equipment are considered to be products, implements, attachments, parts, and bundles not manufactured by the Contractor but in some instances branded by the Contractor.

The following are typical examples of these procurements:

- a. Agency purchasing a contracted base model unit wants a service parts package to take care of the first required oil change on the unit.
 - b. Agency needs to purchase a John Deere tractor with an implement for specialty mowing purposes such as a non-contract/Allied "over the guard rail" boom mower.
 - c. Agency needs to purchase a John Deere tractor for roadside mowing with the tractor tires filled with non-contract/Allied fluid as a ballasting agent in order to maintain stability when performing hillside mowing.
 - d. Agency has a requirement for mounted non-contract/Allied lighting packages on equipment for safety and visibility purposes.
7. Non-contract/allied equipment as defined above may be included on a purchase order as long as the equipment is related to and compatible with the contract equipment being purchased. Stand-alone non-contract/allied equipment purchases shall not be permitted.
8. The price of the non-contract/allied equipment will be negotiated between the Contractor and the Authorized User. Non-contract/allied equipment must be specified on the purchase order as "non-contract" items. Authorized Users must comply with their State's procurement policies and procedures for the purchase of non-contract/allied equipment.
9. Offeror confirms that to the extent non-contract/allied equipment is included on a purchase order with contract equipment, the Contractor will not void any applicable equipment warranty(ies), provided that the following conditions are met:
 - a. Non-contract/allied equipment is properly mounted or installed by an authorized dealer/distributor or other installer approved by the Contractor;
 - b. Any warranty claim for contract equipment is warrantable under the terms and limitations of the applicable Contractor's product warranty(ies); and
 - c. The Authorized User provides supporting documentation upon request by the Contractor for verification of warranty claim.

C. Contract Pricing

This competitive solicitation will develop "catalog discounts" on complete catalog current price list contracts to provide for new grounds maintenance equipment to be made available for purchase. The purchase price shall be the OEMs current price book/product list (MSRP/MPL) in effect at the time the order is placed minus the Contract's negotiated percentage discount. Authorized Users will reference the Contractor's discount table and contact their local authorized dealer/distributor for specific pricing or use another method provided by the Contractor.

At any time throughout the term of the contract, Contractor may submit to the Contracting Officer, Hot List Program Pricing as long as those products are clearly labeled as such. This option must be made available to all Authorized Users.

D. Warranty

Offeror agrees that the products furnished under any resulting contract shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded to the Commonwealth of Virginia or Participating States by any other clause of any resulting contract. The Offeror warrants that at the time of delivery, all equipment purchased under any resulting contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this RFP.

All warranty work performed and parts/materials supplied shall meet OEM warranty requirements. Equivalent substitutions must be approved by the Authorized User's contact person prior to installation. Warranty work performed not meeting specifications or found to be defective and shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the authorized user.

All equipment warranties shall start on the date the equipment is accepted by the Authorized User and shall be for the full term as stated in the warranty. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Authorized User requesting the service. The following information shall be provided in order to determine ownership of the equipment:

- Name of Authorized User, if applicable.
- Make, Model, and VIN of equipment
- Control number/Inventory Number of Authorized User

Repairs made that are covered by a warranty shall not be paid for by the Authorized User. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of any resulting contract shall be employees of the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state owned equipment in the Contractor's possession.

E. Transportation Charges

1. Freight

Freight is FOB from the OEM to the dealer network locations within the contiguous United States or to the nearest port of embarkation for all Participating Entities outside of the contiguous United States. Orders for less than the minimum order of \$500 will be shipped prepaid and added to the invoice. Contractor shall not add freight charges for partial

shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500. Offeror shall provide delivery costs policy guidelines for your dealers, whether it is a set rate per loaded mile or if the dealer is allowed to set the rate.

2. Delivery and Set-Up Fees

Delivery and set-up fees may be an optional charge from the dealer to the Authorized User and shall be prepaid and added to the invoice. If a delivery fee is charged, it may be by loaded mile based on Google Maps or a dealer set fee. Delivery and set-up fee charges must be annotated on the quote/invoice as a separate line item. Authorized Users reserve the right to pickup equipment at no charge.

All equipment shall be delivered assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Authorized User. Liability for product delivery remains with the Contractor until delivered and accepted. Damaged or non-operational equipment or products may be rejected. If the damage is not detectable or readily apparent at the time of delivery, Contractor must allow equipment to be returned within a reasonable time at no cost to the Authorized User. Authorized Users reserve the right to inspect all equipment upon delivery or within a reasonable time after delivery if inspection could not be performed upon delivery. Contractor must make arrangements for the return of damaged equipment at no cost to the Authorized User.

Delivery shall be made in accordance with instructions on the purchase order from each Authorized User. The Contractor shall seek clarification from the Authorized User if there is a discrepancy between the purchase order and what is listed on the contract.

F. Returns

Products may be exchanged for credit in compliance with the Contractor's published return goods policy. This policy may include a restocking fee.

G. Leasing and Financing:

Procurement and other applicable laws of some purchasing entities may permit the use of leasing or alternative financing methods for the acquisition of products under the contract. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Authorized User. Authorized User is to follow the policy and guidelines outlined by their purchasing authority or state regulations and statutes.

H. Trade-In

Authorized User and Contractor may negotiate trade-in allowances.

VI. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. General Requirements

It is the Offeror's responsibility to assure that their proposal package is received by the time and date indicated at the appropriate location. Late proposal packages shall be date and time stamped, marked "late" and retained in the procurement file unopened. Proposals will not be accepted by facsimile transmission or by electronic mail. The Offeror shall make no other distribution of the proposal. In order to be considered for selection, Offeror should submit a complete response to this RFP. There must be:

1. One (1) original copy so marked; the original copy must contain:
 - an ink signature;
 - a complete copy of the solicitation
 - all addenda issued with an ink signature
 - all attachments and any attachment requiring a signature must be an ink signature
2. One (1) hard copy of the proposal and one (1) electronic copy (flash drive preferred) of the proposal. The electronic copy shall have the proposal as one (1) file and the pricing as one (1) file. All other documents shall be combined as one (1) file in Adobe PDF format.
3. If the proposal contains proprietary information, submit one (1) electronic copy (flash drive preferred) that DOES NOT contain the proprietary information, and mark it as a REDACTED. The redacted copy shall be an exact copy of your proposal excluding redacted sections.

B. Proposal Preparation

An authorized representative of the Offeror must sign any submitted proposal.

All required information should be submitted. If an Offeror fails to submit all information requested, the Commonwealth of Virginia may require prompt submission of missing information after the receipt of proposal; however, is under no obligation to do so. Failure to submit all required information may result in a lowered evaluation score of the proposal. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

Other proposal format requirements include:

1. The entire RFP, with signature page, must be included in the ORIGINAL proposal and the ELECTRONIC copy of the proposal. Additional copies must include the signed cover page, but need not include the remainder of the original RFP. See Section E, entitled "Specific Proposal Submission Instructions for submittal requirements.
2. No font smaller than 12 point.
3. 8½ x 11-inch page size (larger pages are allowed for figures or tables, but they should be folded into the overall proposal and used sparingly.)
4. There is an eighty (80)-page limit and all pages must be numbered. A page is one side of a sheet of paper.
5. The original and copy of the proposal should be bound (not with a rubber band or binder clip only) or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume. When using a three-ring binder, be sure that the binder is large enough to contain the entire document or use multiple binders.

C. Proprietary Information

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

The Offeror or Contractor must invoke the protection of this Section prior to, or upon submission of the data or other materials. The Offeror or Contractor must identify the data or other materials to be protected and justify in writing the explicit reasons that such protection is necessary. Failure to mark the data or other materials as proprietary or otherwise classified, will result in the data or other materials being released to Offerors or to the public as provided in the Virginia Freedom of Information Act." Offeror shall utilize Attachment D Proprietary Information Identification form for identifying proprietary information.

The classification of the entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may cause the proposal to not be considered.

D. Oral Presentation

Offerors who submit proposals in response to this RFP may be required to present an oral presentation of their proposal to the Sourcing Team. An oral presentation may provide an opportunity for the Offeror to clarify or elaborate on their proposal submittal. If held, DPS will schedule the time and location of these presentations. If the Offeror is selected to give an oral presentation, such Offeror may be requested to provide additional copies of their proposal at that time.

Oral presentations are an option of the Sourcing Team and may or may not, be conducted; therefore, proposals must be complete.

E. Specific Proposal Submission Instructions

Proposals should be as thorough and detailed as possible so that the Sourcing Team can properly evaluate the Offeror's capabilities to provide the required goods and/or services. Offeror is strongly advised to provide a proposal for the Commonwealth's evaluation purposes that represents their solution to all requirements described in the RFP, and which is complete, concise, comprehensive, simple and easy to understand. All Offerors are required to submit the following items, separated by tabs within the proposal. **Proposals that are not organized as described herein risk elimination from consideration or a lower evaluation score if the Commonwealth and Sourcing Team cannot find the required information specifically addressed by the Offeror. The Commonwealth and Sourcing Team reserve the right to request additional information and/or documentation at any time during the proposal evaluation process.**

TAB 1: RFP and Addenda

The complete RFP (without attachments) signed and filled out as required. These pages will not count against the 80-page submittal limit. Also, include an original signed copy of any addenda to this RFP that may be issued.

TAB 2: Methodology

Offeror shall submit a comprehensive proposal that convincingly and realistically depicts all of their capabilities, qualifications, resources, plans, and processes, which can successfully enable the fulfillment of requirements described in Section V, entitled "Statement of Needs." An Offeror should address in separate and distinct sections, each of the following topics.

1. Provide a detailed written plan explaining how the Offeror will provide services to the Commonwealth of Virginia and NASPO ValuePoint Participating States.
2. Provide a description of your relationship with your dealer/distributor network and a detailed plan that will assure that Offeror's dealer/distributor network would comply with the terms of any resulting contract concerning discount schedules, delivery, services, and warranty issues.
3. Provide a complete list of Offeror's dealers/distributors within the U.S. and U.S. Territories with their response to this solicitation to and include at a minimum the following information:
 - a. Contact name;
 - b. Phone number;
 - c. Fax number; and
 - d. Email address.
4. Provide a general description of the equipment, products and services that you are offering.
5. Describe your order process.
6. Describe your plan for price firmness, and process for conveying changes and notification of product additions, deletions or changes.
7. Describe any additional discount structure that may exist for educational institutions, if available.
8. Describe initial and ongoing communication plans and methods your company would employ in order to educate and train staff in regards to equipment purchases as well as problem solving and problem prevention issues with any purchases
9. Describe the features, attributes or capabilities that may improve functionality or differentiates your equipment to include any leading edge technologies.
10. Describe any value added attributes in detail such as training programs, fuel efficiency, green initiatives, or Small Business, Women-owned or Minority-owned initiatives or program.

TAB 3: Qualifications and Experience of Offerors

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

1. Organizational Structure
 - a. Provide a detailed written narrative statement of the company's organizational structure, history and locations, including the principals and their backgrounds.
 - b. Provide the legal name, address and the legal form of company (partnership, corporation, joint venture, etc.)

- c. Provide addresses of affiliates, subsidiaries or satellite service locations that will be used to support the contract.
2. Demonstrated Knowledge and Experience
 - a. Provide a detailed narrative describing the company's qualifications and background in providing these types of goods and services.
 - b. Describe specialized experience and capability in providing the type of goods and services required in the Statement of Needs along with demonstrated knowledge and experience outlined herein.
 - c. Describe your company's experience implementing and maintaining a similar solution and providing these goods and services described herein for other identified clients of comparable size or larger.
 - d. Provide resumes of Key Personnel to be assigned to the contract. Resumes shall include names, experience, and qualifications.

3. Litigation

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

TAB 4: References

Provide a minimum of three (3) references. Preferably, these references would have active accounts maintained over the past two (2) years. Include contact information, phone number and email address of current contacts. See Attachment F, entitled "Vendor Data Sheet."

TAB 5: Proposed Price Plan

1. Pricing the Offeror provides in Attachment I, Pricing Schedule will be used for evaluation purposes. Offerer shall submit their pricing in Excel format. Reference the tab on the Pricing Schedule for minimum requirements or specifications.
2. The categories listed in the Pricing Schedule describe a market basket of grounds maintenance equipment based on historical sales in the Commonwealth of Virginia and Participating States.
3. Offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the proposal to enable the Commonwealth to determine if the product offered meets the requirements of the proposal. Failure to do so may cause the proposal to be considered nonresponsive.
4. Offerors are encouraged to propose quantity, volume or multi-unit discounts.
5. Describe your pricing model and provide a percentage discount table (whole percentages only) for equipment categories offered. This table should include any available options. Examples of product categories are: Turf Equipment, Golf Equipment, Ag Equipment, Snow Equipment, Tractors, and Attachments/Implements.
6. Submit current electronic Manufacturer's National Published Price List for the basic units with all standard equipment, and for all associated add-on attachments/implements that will allow

Authorized Users to change the configuration of the basic unit to fit their needs. Contractor's name and address must appear on all catalogs and price lists. If no such national published price lists exist, Offeror should clearly state this within their proposal response. It will be the responsibility of the Offeror to provide acceptable documentation concerning a reasonable price list.

7. Indicate the brand or equivalent on the Pricing Schedule listed in Attachment I. Offeror should indicate any deviations from the brand name listed with the appropriate exception and documentation. Preference may be given to Offerors who propose the most complete product line within each category. The Commonwealth reserves the right to obtain technical data and to request clarification when deemed necessary.

TAB 6: Attachments

Include the following attachments in this section:

- Attachment D: Proprietary Information Identification Form
- Attachment E: Exceptions to RFP
- Attachment F: Vendor Data Sheet to be included in Tab 4 "References".
- Attachment G: Virginia State Corporation Commission form
- Attachment H: Small Business Subcontracting Plan
- Attachment I: Pricing Schedule to be included in Tab 5 "Proposed Price Plan".
- Attachment J: NASPO ValuePoint Intent to Participate State List

TAB 7: Appendices, Data, and Other Submissions

1. Describe in detail your warranty program and coverages to include any limitations, conditions or requirements, and claims procedure. Provide a copy of your warranty
2. Provide a detailed description of your freight, shipping and delivery policies/programs to include shipping outside of the contiguous United States and if dealers are permitted to set their own rate or must use a loaded rate.
3. Describe your returned goods program. Provide your returned goods policy.
4. Contractor shall provide Material Safety Data Sheets if applicable, upon request.

TAB 8: NASPO ValuePoint Required Submission Information

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a state's Participating Addendum.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a master agreement, the Statement of Needs and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offeror will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A.

An Offeror must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment A).

1. **Insurance:** To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating State at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 21.
2. **NASPO ValuePoint Administrative Fee and Reporting Requirements:** To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions. In addition to this administrative fee, Participating States may also have an administrative fee that will be addressed in the participating addendums.

The Offeror shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the contract period. Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

3. **NASPO ValuePoint eMarket Center:** To be eligible for award, the Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) to integrate its presence in the NASPO ValuePoint eMarket Center either through an electronic catalog (hosted or punchout site) or unique ordering instructions. Refer to Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

Those terms and conditions require as a minimum that the Offeror agrees to participate in development of ordering instructions. Offeror shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

4. **Lead State Terms and Conditions:** Refer to Attachment C for the Lead State specific Terms and Conditions that will be required.
5. **Participating State Terms and Conditions:** As a courtesy to Offerors, some Participating States' specific Terms and Conditions are provided as Attachments to this solicitation. These are for informational purposes only and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendum. Offeror shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.
6. **Promotion of the NASPO ValuePoint Master Agreement:** The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint cooperative procurement program. In this regard:

- a. Briefly describe how you intend to promote the use of the Master Agreement.

- b. Identify any GSA, state or cooperative purchasing contracts that you hold and the annual sales volume of each contract over the past three years.
 - c. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
 - d. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope of the agreement with respect to any potential order?
 - e. How will your company manage due dates for administrative fee payments and usage reports?
 - f. Through its Cooperative Development Coordinators and Education & Outreach teams, NASPO ValuePoint assists Lead States by engaging vendors in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
7. **Usage Fee and Reporting Plan:** Offeror shall include in their proposal a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include but not be limited to the following components:

- Offeror shall identify the person responsible for providing the mandatory usage reports.
- Offeror shall identify the method and frequency in which usage data will be collected from authorized distributors.
- Offeror shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- Offeror shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

F. PROPOSAL SUBMISSION ADDRESS INSTRUCTIONS:

1. For All Proposals: Offeror must ensure the RFP name and number are clearly visible on the outside the package. See Attachment C.9 for identification of proposal package information.

If a proposal response is not contained in package as described above, the Offeror risks that the package may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other unrequested correspondence or other proposals should be placed in the package.

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

THE COMMONWEALTH SHALL NOT BE RESPONSIBLE IF A PROPOSAL IS NOT DELIVERED BY THE DUE DATE AND TIME.

LATE PROPOSALS WILL NOT BE CONSIDERED.

2. Express Delivery Service: Send the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror is cautioned to not rely on the dependability of Next Day Delivery Service.

3. Hand-Delivered Proposals: Deliver the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for parking, walking to the building, and security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:
 - Present a valid and current picture ID;
 - Pass through metal detectors / security wands; and
 - Permit all bags to be searched by Capital Police or security personnel.

4. U.S. Postal Service: Mail the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for the mailing envelope containing the proposal response to be processed through the Commonwealth’s Mail Security Processing System prior to delivery to Bid Receiving.

VII. EVALUATION CRITERIA

- A. The Sourcing Team will review all proposals received by the proposal submission deadline. Proposals must be complete and responsive to all sections of the RFP. Proposals that do not fulfill all program requirements or omit any of the requested contents may receive a reduced evaluation score. Proposals will be evaluated on the Offerors’ demonstrated ability to meet the expectations of the RFP and provide solutions that will meet or exceed the current and future needs of the Commonwealth of Virginia and the NASPO ValuePoint Participating States. Factors upon which proposals will be evaluated include:

<u>Evaluation Criteria</u>	<u>Point Value</u>
Quality of equipment and service offered and the suitability for the intended purpose stated in this RFP	200
Plans and capability of the Offeror to provide the equipment/service stated in this RFP	200
Experience in providing the equipment/service described herein; names, qualifications, and experience of personnel that will be assigned to handle day-to-day business under the contract. Resumes of personnel are needed.	150
Small Business Subcontracting Plan	200
Pricing	250
TOTAL	1000

Pricing Proposal Evaluation Method (Ratio Calculation): The lowest price shall be scored the maximum number of evaluation points per line item for the price criteria. The lowest price is then divided by each Offeror's proposed price and the result is multiplied by the points assigned for the line item price (25).

The point computation formula for each line item is:

$$\frac{\text{Lowest Pricing Proposal}}{\text{Offeror's Pricing Proposal}} = \% \text{ Factor} \times 25 \text{ points} = \text{Points Value Assigned}$$

The point value total for all line items will not exceed 250 points.

Only complete responses will be considered for award. Although price is an important factor in the award process, because the contract will be made available to all Participating States, all information provided concerning the OEMs ability to comply with the contract requirements will be a significant factor in the award process.

VIII. SCHEDULE OF EVENTS

This is a tentative schedule of events for this solicitation. Times listed are for the Eastern Time Zone:

Solicitation Release	June 28, 2019
Pre-Proposal Conference	July 23, 2019 at 2:00 P.M. EDT
RFP Question Deadline	August 6, 2019 at 5:00 P.M. EDT
Closing Date	August 21, 2019 at 1:00 P.M. EDT
Anticipated Award Date	October 31, 2019

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

IX. PRE-PROPOSAL CONFERENCE

An optional Pre-proposal Conference will be held at 2:00 P.M. on July 23, 2019, at the Patrick Henry Building located at 1111 East Broad Street, Room 1023, Richmond, VA 23219. The purpose of this conference is to allow any potential Offeror 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 proposal, a potential Offeror is encouraged to attend in person or via teleconference. Any changes to the solicitation resulting from this conference will be issued in an amendment that must be signed and included in the Offeror's proposal.

Copies of the RFP will not be provided at the conference; therefore, participants should bring a copy for reference purposes.

Teleconference participants must use the instructions provided below and are advised to start dialing no later than 1:50 P.M. to ensure a telephone connection at the start of the teleconference. There will be no technical assistance available if a connection cannot be made.

1. Dial-in Number 419-768-7116

2. When prompted, enter Conference Code 888903 followed by the # key

An email notification should be sent to Danielle.Keeton@dgs.virginia.gov to indicate whether participation will be in person or via teleconference no later than 12:00 P.M. EDT on July 15, 2019.

Participants must allow ample time for parking, walking to the building and for security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:

- Present a valid and current picture ID;
- Pass through metal detectors / security wands; and
- Permit all bags to be searched by Capital Police or security personnel.

Should any attendees show up or call in after 2:00 PM EDT, information already discussed will not be repeated. It is strongly encouraged that written questions are submitted in advance of the pre-proposal conference no later than 12:00 P.M. EDT on July 15, 2019.

X. REPORTING AND PAYMENT INSTRUCTIONS

Contractor shall submit specific summary and detailed usage reporting requirements as stated in Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions. The reports shall be provided in an electronic format to Participating Entities and/or NASPO ValuePoint during the Contract term or any renewal period at no additional cost.

Contractor agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. In addition to this administrative fee, Participating States may also have an administrative fee that will be addressed in the Participating Addendums.

A. REPORTING INSTRUCTIONS

1. NASPO ValuePoint Usage Reports: Contractor shall be required to provide quarterly summary and detailed usage reports to NASPO ValuePoint. Refer to Attachment A, Section 7 for information on the usage reporting requirements.

B. PAYMENT INSTRUCTIONS

1. NASPO ValuePoint Administrative Fee: Contractor shall pay an administrative fee to NASPO ValuePoint. Refer to Attachment A, Section 6 for information on the administrative fee.

XI. QUOTES AND ORDERS:

1. **Quotes:** Quotes shall show the manufacturer's suggested retail price minus any trade-in allowance, if applicable, contract discount percentage off, delivery and set-up fees, allied pricing and final price for item delivered.
2. **Minimum Order:** For orders of less than \$500.00, the Contractor will be permitted to add the actual transportation cost prepaid and added (PPD&ADD) to invoice for payment or the agency may purchase such products off contract from other sources. Partial shipments of less than minimum order value, which are made at the option of the Contractor, shall be made F.O.B. Destination with no transportation charges added to the invoice. If an Authorized User requested

shipments are below the minimum order value, the Contractor may add actual transportation to invoice for payment.

3. **Authorized Users / Participating Entities may order Products from this Contract by one of the following methods:**
 - a. eVA: All Commonwealth of Virginia Authorized Users shall issue an order through the Commonwealth's eVA eProcurement website portal
 - b. Participating Entity e-Procurement systems: NASPO ValuePoint Participating Entities may issue orders through their own entity-specific e-Procurement system, as specified in any fully executed Participating Addendum
 - c. Purchase Order (PO): An official and duly authorized purchase order form issued by a Participating Entity external to any e-Procurement system.
4. Any Order placed prior to termination or expiration of the Agreement, shall survive such expiration or termination, and the provisions of this Agreement shall continue to have full force and effect for the duration of any Order term.
5. **Order Changes:** Any changes to an Order after submission to the Contractor must be made between the Authorized User and Contractor. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. No Order changes may be made verbally. Only the Authorized User has the right to issue a change to any Order.

XII. INVOICES AND METHODS OF PAYMENT

A. INVOICES:

Contractor shall submit invoice(s) to the address designated on the Order no later than the 10th of the month following acceptance by the Authorized User of goods and services rendered. No invoice may include any cost other than those identified in the Order referencing the Contract. Invoice(s) shall provide at a minimum:

1. Name of the ordering entity
2. Entity point of contact name
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
9. Delivery and set-up fees as separate line items

B. METHODS OF PAYMENT:

Payment will be made within thirty (30) days for Commonwealth of Virginia Agencies and forty-five (45) days for localities of receipt of a valid invoice for all goods and/or services received and accepted. Payment is anticipated to be made by check or EDI.

Participating States may negotiate other payment terms in their Participating Addendums.

XIII. NEGOTIATIONS, CONTRACT AWARD PROCESS AND POST AWARD FORMALIZATION OF THE MASTER AGREEMENT

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. Price shall be considered, but need not be the sole determining factor. Negotiations shall be conducted with the Offerors so selected. After negotiations have been conducted with each offeror so selected, the Commonwealth 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. 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 Commonwealth reserves the sole right during negotiations of any Master Agreements to adjust terms and conditions that would not, in its sole judgment, have a material effect on price, schedule, Statement of Needs, scope of work, or risk to the Commonwealth and Participating Entities, with materiality defined in terms of the effect on the evaluation and award. In any event, the Commonwealth reserves the right to accept changes that are more favorable to its requirements. If no Master Agreement is reached with an Offeror, then the Commonwealth may negotiate with any other Offerors, or make no award under this RFP.

DPS will issue a Notice of Intent to Award (NOIA) electronically in the Commonwealth's eVA system. Any resulting award document from this RFP will be a NASPO ValuePoint Master Agreement that is negotiated between the Commonwealth and selected Offeror(s) incorporating by reference in this RFP, and all requirements and terms and conditions herein, together with an Offeror's proposal, as negotiated.

Any offeror may protest the award of a Master Agreement in accordance with Code of Virginia § 2.2-4360.

Proposal files are public records and will be available for review at the issuing office of the Commonwealth's Division of Purchases and Supply by appointment with the DPS Statewide Sourcing & Contracting Officer named on the cover page of this RFP.

This RFP may be cancelled or proposals rejected at any time prior to any award if the Commonwealth determines that such action is in the collective best interests of the Participating Entities, and it is not required to furnish a statement of the reasons that a particular proposal was not deemed to be the most advantageous (Code of Virginia § 2.2-4359D).

XIV. NASPO VALUEPOINT MASTER AGREEMENT

Any NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum. The Master Agreement will include, but is not limited to, the Commonwealth of Virginia General Terms and Conditions in Attachment B and the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A (which are required to execute a Master Agreement), the Statement of Needs and selected portions of the Offeror's Proposal.

XV. ATTACHMENTS LIST

- A. NASPO ValuePoint Master Agreement Terms and Conditions
- B. Commonwealth of Virginia – Contract General (Mandatory) Terms and Conditions
- C. Commonwealth of Virginia – Contract Special (Desirable) Terms and Conditions
- D. Proprietary Information Identification
- E. Exceptions to RFP
- F. Vendor Data Sheet
- G. State Corporation Commission Form
- H. Small Business Subcontracting Plan
- I. Pricing Schedule
- J. NASPO ValuePoint Intent to Participate State List

ATTACHMENT A



NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement or Master Ordering Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for 2 year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow- on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of

Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org/Account/Login?ReturnUrl=%2F>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD- ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in Attachment L.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target

strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years after] award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master

Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

16. Payment

Unless otherwise agreed upon in a Participating Addendum, payment after acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by

law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

20. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the

required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

21. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe

that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

23. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, and other third parties.

25. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal.

The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

26. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Cancellation

Cancellation of this Master Agreement is governed by Attachment C, section 3, Cancellation of Contract.

Any Participating Entity may cancel its participation upon 30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

28. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

29. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 10 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

e. Attachment C, including the Contractual Disputes provision in section 13, shall apply only to Participating and Purchasing Entities in the Commonwealth of Virginia unless those provisions are incorporated by reference into a Participating Addenda or Orders by other entities.

30. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third- party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to

vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

33. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

34. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

35. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

36. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

ATTACHMENT B

COMMONWEALTH OF VIRGINIA GENERAL TERMS AND CONDITIONS

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

- A. **VENDORS MANUAL**: This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the "I Sell to Virginia" tab.
- B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, 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 the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION**: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

- e. 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 contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING**: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS**: By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- 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.
- G. **ANTITRUST**: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs**: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS**: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT**:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or 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 awarded a contract under this solicitation 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 contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF*

TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the

procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this proposal, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make, or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the proposal. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the Proposal will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Proposal nonresponsive. Unless the offeror clearly indicates in its Proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the proposal.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their Proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** The Contractor certifies that if 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 the Contractor and any subcontractors will maintain these insurance coverage during the entire term of the Participating Addendum and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the Participating Addendum shall be in noncompliance with the Participating Addendum.
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.

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

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **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 bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

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

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

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 solicitation/contract 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.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency 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 agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- AA. **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.

ATTACHMENT C

COMMONWEALTH OF VIRGINIA SPECIAL TERMS AND CONDITIONS

The following terms and conditions may be included in any Participating Addendum between the Commonwealth of Virginia and a Contractor for any resulting contract. Other Participating Entities may have their own provisions.

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
2. **AUDIT OF PRICING AND MANUFACTURER AND/OR COMMODITY DISCOUNTS:** Contractor may be requested to obtain a certified audit, at any time for the contract duration, to verify Contractor pricing is same as the market basket prices and also to verify to the Commonwealth that category discounts and manufacturer discounts are in compliance with the contract terms.
3. **BREACH:** The Contractor shall be deemed in breach of this Agreement if the Contractor:
 - a. Fails to deliver any Product or Service by the specified delivery date;
 - b. Repeatedly fails to respond to requests for required service within the time limits set forth in this Agreement;
 - c. Fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or
 - d. Fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was from causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

4. **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 also be terminated by the contractor, 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.
5. **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.

6. **CONTRACTUAL DISPUTES:** In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether from money or other relief, shall be submitted in writing to the Authorized User 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 Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. 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.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia 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 Section 2.2-4364, Code of Virginia, or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

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.

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' remedies include the right to terminate any Services hereunder.

For any Order issued by an Authorized User, the User is responsible to fully and independently administer any Services provided under the Agreement to include contractual disputes, and invoicing and payments, without direct administration from DGS. Neither the Commonwealth nor DGS shall be held liable for any costs or damages by any other User as a result of any authorization by the Contractor to use the Agreement.

By entering into this Agreement, the Contractor hereby certifies and warrants that neither the Commonwealth nor DGS shall be held responsible or accountable for any acts or omissions of any Authorized User, and shall not be considered in default of this Agreement, no matter the circumstances. The use of the Agreement does not preclude any participating Authorized User from using other agreements or competitive processes as their needs may require

7. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple 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. Contractors should email Catalog or Index Page information to eVA- catalo g-manager@dgs.virginia.gov.

8. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to

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

- 11. PRICE ESCALATION/DE-ESCALATION:** The Commonwealth recognizes that current price list contracts are subject to adjustments at different times during the year; therefore, there will be no pre-determined price adjustment time period for the contract.

The percentage discount may be increased but shall not be decreased throughout the term of the contract, to include all renewals, and shall apply to any new equipment, which may be introduced and added to the manufacturer's product line. Public bodies will apply the discount to the current price list contract that has been incorporated as part of the Contract by the Purchasing Officer, at the time the order is placed. However, should the price decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. Price increases after placement of order will not be accepted.

Contractor shall give not less than 60 days advance notice of any price increases to the Contracting Officer. Price adjustments should not exceed by more than the **Commercial Turf and Grounds Care Equipment Manufacturing** category of Table 9 of the PPI section of the Producer Price Index of the United States Bureau of Labor Statistics. Any approved price changes will be effective only when approved by the Contract Officer at the beginning of the calendar month following the end of the full 60-day notification period or approval date. 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 verify that the requested price increase is general in scope and not applicable just to NASPO ValuePoint Master agreements.

The Contracting Officer will notify 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, be required to be communicated immediately to the Contracting Officer.

Note: Consumers Price Indices, Producers Price Indices or other appropriate indices will be used as a guide to determine price increases or decreases. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

- 12. PROPOSAL ACCEPTANCE PERIOD:** Any Proposal received in response to this RFP shall be valid for ninety (90) days. At the end of the ninety (90) days, the Proposal may be withdrawn at the written request of the offeror. If the Proposal is not withdrawn at that time, it remains in effect until an award is made or the RFP is canceled.
- 13. PRIME CONTRACTOR RESPONSIBILITIES:** Contractor shall be responsible for completely supervising and directing the work under the 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. 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.

14. TERM AND RENEWAL OF CONTRACT: The initial contract term will be for a period of three (3) years from the date of award. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completed.

This contract contains two (2) successive two year renewal periods, and at a reasonable time (approximately four to six months) prior to the expiration, the decision as to whether to renew will be made by the Contracting Officer.

15. REPORTS AND FEES FOR SALES IN THE COMMONWEALTH OF VIRGINIA:

A. CONTRACTOR'S QUARTERLY REPORT OF SALES: Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. See attachment to this solicitation for the report template which identifies the information to be provided. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit information in the required format and time may result in cancellation of the awarded contract.

B. SURCHARGE ADJUSTMENT FEE (SCA): contractor must 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: SCA
 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. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of this contract.

C. SCHEDULE:

<u>Sales Report Period</u>	<u>Sales Months</u>	<u>Quarterly Report Due</u>
1st Quarter	Jan, Feb, Mar	April 15th
2nd Quarter	Apr, May, June	July 15th
3rd Quarter	July, Aug, Sept	October 15th
4th Quarter	Oct, Nov, Dec	January 15th
<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Quarterly 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

D. **EVA VENDOR TRANSACTION FEE:** Contractor shall pay the vendor transaction fee for each order issued through the Commonwealth's e-procurement website "eVA". Vendor transaction fees are determined by the date the original purchase order is issued and the current fee schedule. Refer to Attachment B Item X entitled "eVA Business-To-Government Vendor Registration, Contracts, and Orders" for more information on eVA fees.

16. **SPECIAL EDUCATION OR PROMOTIONAL DISCOUNTS:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of this Contract. Such notice should also advise the duration of the specific sale or discount price.

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

18. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING :**

A. Submission of Small Business Subcontracting Plan: It is the statewide goal of the Commonwealth that 42% of its purchases be made from small businesses certified by DSBSD. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. 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 and businesses with DSBSD service disabled veteran-owned status when they have also received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the offeror shall note such on the Small Business Subcontracting Plan. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.

B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. Prime Contractor Subcontractor Reporting:

1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are DSBSD-certified businesses or Employment Services Organizations (ESOs). The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women owned, minority-owned, businesses with DSBSD Service Disabled Veteran-owned status, or Employment Services Organization) and type of product/service provided, at the frequency required.

2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DSBSD-certified

businesses or Employment Services Organizations. 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/service provided, at the frequency required.

ATTACHMENT D

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

PROPRIETARY INFORMATION IDENTIFICATION

Name of Firm/Offeror: _____

Trade secrets or proprietary material submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Code of Virginia § 2.2-4342F, in writing, either before or at the time the data or other material is submitted. The trade secret or proprietary material submitted in the proposal must be identified by some distinct method such as highlighting or underlining, and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary material. Offeror shall complete and provide the "Proprietary Information Identification" form with a summary of this material in their Proposal response which must specifically identify the data or materials to be protected including the section and page numbers of the proposal in which it is contained, and state the reasons protection is necessary. **The classification of an entire Proposal document, line item prices, and/or total Proposal prices as trade secret or proprietary is not acceptable and the Proposal may be rejected.**

SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT F

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

VENDOR DATA SHEET

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

1. Qualification: The vendor must have the capability and capacity in all respects to fully satisfy all contractual requirements.
2. Vendor's Primary Contact:
Name (Print): _____ Phone: _____
3. Years in Business: Indicate the length of time you have been in business providing this type of goods or services:
_____ Years _____ Months
4. Vendor Information: eVA Vendor ID or DUNS Number: _____
5. Provide information of at least three (3) current or recent accounts, either commercial or governmental, that your business has provided similar goods and/or services.

A. Company: _____ Contact: _____
 Phone:(_____) _____ Fax: (_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

B. Company: _____ Contact: _____
 Phone:(_____) _____ Fax: (_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

C. Company: _____ Contact: _____
 Phone:(_____) _____ Fax:(_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

I certify the accuracy of this information:

Signed: _____

Title: _____ Date: _____

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT G

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

VIRGINIA STATE CORPORATION COMMISSION FORM

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

The undersigned Offeror:

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

-OR-

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

-OR-

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

-OR-

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

**** NOTE ****

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

Signature: _____

Name: _____
(Print)

Title: _____

Name of Firm: _____

Date: _____

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

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT H
COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential offerors are required to return this document with their response.

Small Business "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small businesses for the initial contract period in Section B

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD-certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

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

Certification number: _____ Certification Date: _____



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 1 TO ALL OFFERORS:

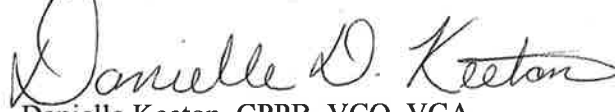
Request For Proposal: RFP #377
Commodities: 51500, 02000
Date: July 11, 2019
Proposal Due: August 21, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 1, Pre-Proposal Conference:** Change to read, "An Optional Pre-proposal Conference will be held at 2:00 PM Eastern Daylight Time on July 23, 2019, at the Patrick Henry Building, 1111 East Broad Street, Room 1023, Richmond, VA 23219."
2. **Reference Page 4, Purpose:** Change to read, "The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS") is issuing this formal request for sealed proposal ("RFP") # 377 to establish one or more Master Ordering Agreements ("Master Agreement" or "Contract" or "Agreement") through competitive negotiation with experienced qualified OEMs for GROUNDS MAINTENANCE EQUIPMENT and services."
3. **Reference Page 5, Lead State, Solicitation Number and Contract Administrator:** Change to read, "The Commonwealth of Virginia is the Lead State and issuing office for this solicitation and all subsequent amendments relating to it. The solicitation reference number is RFP# 377. This number must be referenced on all proposals, correspondence, and documentation relating to the RFP."
4. **Reference Page 5, Background – NASPO Value Point, Section B, Participating States:**
Change to read: "List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, Vermont, Illinois."
5. **Add the following document:**
 - Illinois Terms and Conditions

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

Very truly yours,

A handwritten signature in cursive script that reads "Danielle D. Keeton". The signature is written in black ink and is positioned above the printed name and title.

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 2 TO ALL OFFERORS

Request For Proposal: RFP #377
Commodity: 51500, 02000
Date: July 19, 2019
Proposal Due: August 21, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 5, Background – NASPO Value Point, Section B, Participating States:** Change to read: “List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, Vermont, Illinois, and Maryland.”
2. **Add the following document:**
Maryland Terms and Conditions

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

Very truly yours,

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948

Name of Firm

Signature / Title

Date



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 3 TO ALL OFFERORS

Request For Proposal: RFP #377
Commodity: 51500, 02000
Date: August 16, 2019
Revised Proposal Due: September 4, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 1, Proposal Due Date:** Change to read "Due Date/Time: September 4, 2019 at 1:00PM EDT"
2. **Reference Attachment I, Pricing Schedule:** Delete and replace with attached Pricing Schedule

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

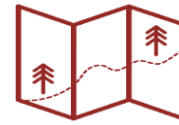
Very truly yours,

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948




Name of Firm

Signature / Title

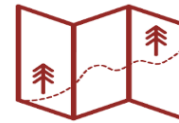
Date



PORTFOLIO TITLE: [Ground Maintenance Equipment \(2020-2025\)](#)
LEAD STATE: Commonwealth of Virginia

<p><u>OVERVIEW:</u></p> <p>The Master Agreements in this portfolio offer up to five product categories of Ground Maintenance Equipment direct from the Original Equipment Manufacturers or from nationwide resellers.</p>	<p><u>INITIAL TERM:</u> February 28, 2020 through February 27, 2023</p> <p><u>RENEWALS:</u> Two additional 1-year renewal options.</p> <p><u>TOTAL TERM POSSIBLE:</u> Five Years</p>
<p><u>PRODUCT CATEGORIES:</u></p> <p>Category 1: Tractors (Heavy Duty and Compact)</p> <p>Category 2: Tractor Towed PTO (Gang Mowers and Single Unit Mowers)</p> <p>Category 3: Off Road Utility Vehicles</p> <p>Category 4: Self Propelled Riding Mowers (Medium Duty Wide Coverage and Zero Turn)</p> <p>Category 5: Turf Maintenance (Towed and Ground Driven)</p> <div style="display: flex; justify-content: space-around; align-items: center;">   </div>	
<p><u>SUPPLIERS AVAILABLE:</u></p> <ul style="list-style-type: none"> ✓ Bobcat Company ✓ CNH Industrial America, LLC ✓ Deere & Company ✓ Husqvarna ✓ Hustler Turf Equipment, Inc. ✓ The Toro Company 	<p><u>KEY BENEFITS:</u></p> <p>The following key benefits were derived from the re-procurement of this portfolio:</p> <ol style="list-style-type: none"> 1. Provides a wider offering of Ground Maintenance Equipment, such as tractors, mowers, utility task vehicles, loaders, scrapers, cutters, seeders, sprayers, tillers, backhoes, parts, attachments, and accessories. 2. Retained all three of the previous suppliers and achieved deeper discounts of 1% to 5% per product category. 3. Added a state leasing option that can be identified in a Participating Addendum.
<p><u>PRICING:</u></p> <p>Discounts are provided at a percentage off the Original Equipment Manufacturer’s retail price catalog.</p> <ul style="list-style-type: none"> ➤ Bobcat Company – 20% Off on Bobcat and Steiner Tractors; 18% or 20% off on Bobcat Loaders, 18% off on Bobcat UTV’s; and 24% off on Bobcat Attachments and Implements. ➤ CNH Industrial America, LLC – 22% to 33% off on Heavy-Duty Tractors; 22% to 28% off on Compact Tractors; and 24% off on Tractor Towed PTO. ➤ Deere & Company - 14% to 24% off on Tractors and Utility Vehicles; 9% to 24% off on Mowers; and 22% off on Sprayers, Tillers, Cutters, and Material Handlers. ➤ Husqvarna - 30% Off on Zero-Turn Mowers; 20% Stand-On Mowers; and 15% off on all Attachments and Accessories. ➤ Hustler Turf Equipment, Inc. - 12% off on Kohler Standard Bed Vehicles and Kohler Level Lift Bed Vehicles. 	

DISCLAIMER: This document is provided by NASPO ValuePoint and is for informational purposes only. While NASPO ValuePoint has worked to ensure the validity of the information provided, the user should not rely solely on the information contained in this document. Official records are maintained by the procurement office of the state that led the solicitation and should be reviewed prior to making any decision.






➤ **The Toro Company:** 21% to 23% off on Toro Commercial Division Products; 27% off on Toro LCE Turf Products; 20% off on Toro LCE Snow Products; 30% to 40% off on Toro Irrigation Products

PROCUREMENT BACKGROUND:

In 2018, the Sourcing Team requested re-procurement of the expiring Ground Maintenance Equipment portfolio. The NASPO ValuePoint Management Board approved conducting a re-solicitation and the Sourcing Team completed the RFP process in the fall of 2019. In December 2019, the Sourcing Team sought and was granted approval of the award by the NASPO ValuePoint Management Board.

STATES ON SOURCING TEAM:

-  Virginia (Lead)
-  Kansas
-  South Carolina



SOLICITATION INFORMATION:

Type: Request for Proposal (RFP)
 Solicitation Number: RFP377-5
 Date Released: June 28, 2019
 Date Closed: September 4, 2019

PUBLIC POSTING OF SOLICITATION:

Solicitation was Publicly Advertised from June 28, 2019 to August 21, 2019.

- Website Posted On: [eVA Virginia’s Marketplace](#)
- Posting Link: [Ground Maintenance Equipment RFP-377-5](#)
- Number of Days Solicitation was Publicly Posted: 68
- Number of Amendments Posted: 3

PUBLIC OPENING

Sealed responses were publicly opened on August 21, 2019 at 1:00 pm EST, in Richmond, Virginia.



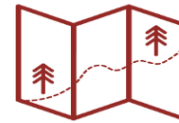
VENDOR RESPONSES:

- Number of Vendor Responses Received: 10
- Number of Non-Responsive Vendor Responses: 0
- Number of Vendor Responses Evaluated: 10

EVALUATIONS:

Responses were evaluated by the members of the Sourcing Team during the week of October 15-17, 2019 in Richmond, Virginia.

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EVALUATION CRITERIA:

Responses were evaluated based on the following Evaluation Criteria:

1. Quality of Equipment
2. Plan to Provide Equipment & Services
3. Experience
4. Small Business Plan
5. Pricing



SCORING:

Responses were scored according to the RFP’s Evaluation Criteria; however, none of the vendors submitted a Small Business Plan, therefore all vendors were scored a zero in that area of the criteria. Anyone interested in receiving a copy of the scoring that was used to determine the awards for this RFP should contact the Lead State of Virginia as identified on the [Ground Maintenance Equipment \(2020-2025\) portfolio’s NASPO ValuePoint website](#).

AWARD:

The RFP allowed for multiple vendor awards based on each vendor’s success in earning more than 500 of the total 1,000 maximum points possible during the scoring process; six of the ten vendors evaluated received scores over 500 points making them eligible for award.

PUBLIC POSTING OF AWARD:

Award Posting Start: January 10, 2020
 Award Posting End: January 24, 2020
 Posting Link: [Ground Maintenance Award](#)
 Total Days Posted: 10 Business Days
 Vendors Awarded: 6
 Protests Received: 0

AWARDED VENDORS:

- Bobcat Company for Categories 1 and 3.
- CNH Industrial for Categories 1 and 2.
- Deere & Company for Categories 1,2, 3, and 4.
- Husqvarna for Category 4.
- Hustler Equipment for Category 3.
- Toro for Categories 1, 2, 3, 4, and 5.



DISCLAIMER: This document is provided by NASPO ValuePoint and is for informational purposes only. While NASPO ValuePoint has worked to ensure the validity of the information provided, the user should not rely solely on the information contained in this document. Official records are maintained by the procurement office of the state that led the solicitation and should be reviewed prior to making any decision.



COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

**MODIFICATION #6
TO
CONTRACT NUMBER CTR006026
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY**

This MODIFICATION #6 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro", relating to the modification of Contract CTR006026 effective February 28, 2020, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement A) Renewal of the Contract B) Update "General Terms and Conditions". All changes are effective upon full execution of this document, unless otherwise noted, and shall be included in any subsequent modifications.

A. Reference: Contract CTR006026, " Renewal of Contract."

Both parties hereby agree to renew the Contract for an additional one (1) year period, beginning Feb 28,2024 through February 27, 2025, with zero renewal options remaining.

B. Reference: Contract CTR006026, "Changes to Commonwealth of Virginia General Terms and Conditions"
General Terms and Conditions have been changed to read as indicated below per APSPM, PIM42.

A. VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The 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 eva.virginia.gov under "I Sell To Virginia".

U. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA (eva.virginia.gov) for a minimum of 10 days.

X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION CONTRACTS AND ORDERS: The eVA Internet electronic procurement solution, web site portal 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 bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows: a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is: (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order. (ii) Businesses that are not DSBSDcertified 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 solicitation/contract 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 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.

The foregoing is the complete and final expression of the parties' agreement to modify Contract CTR006026 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY

COMMONWEALTH OF VIRGINIA

BY:

Eric C. Funk

Tracy Wrenn, VCO

NAME:

Edric Funk

NAME:

Tracy Wrenn

Printed Name

Printed Name

TITLE:

Group Vice President, Golf,
Officer Grounds & Irrigation

TITLE:

Statewide Sourcing & Contracting

DATE:

2/23/2024

DATE:

2/26/2024



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

**MODIFICATION #5
TO
CONTRACT NUMBER CTR006026
FORMERLY CONTRACT NUMBER E194-81037
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY**

This MODIFICATION #5 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro" relating to the modification of Contract E194-81037 February 28, 2020 as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement A.) Renewal of the Contract. B.) Update the Contract number, and C.) Update "Default" General Term and Condition. All changes are effective upon full execution of this document, unless otherwise noted, and shall be included in any subsequent modifications.

A. Reference: Contract E194-81037, "Renewal of Contract."

Both parties hereby agree to renew the Contract for an additional one (1) year period, beginning February 28, 2023 through February 27, 2024 with one (1) renewal options remaining.

B. Reference: Contract E194-81037, "Changes to the Contract."

Due to the new Commonwealth of Virginia e-procurement system, the contract number has changed from E194-81037 to CTR006026.

C. Reference: Contract E194-81037, "Changes to General Term and Condition" General Term and Condition "*Default*" has been changed to read: *DEFAULT*: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract with no penalty, and procure all goods contracted for from other sources with the contractor having no obligation for any cost differential

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

(SIGNATURE PAGE TO FOLLOW)

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY

BY: Eric C. Funk

NAME: Edric Funk
Printed Name

TITLE: Group Vice President

DATE: January 23, 2023

COMMONWEALTH OF VIRGINIA

BY: Tracy Wrenn, VCO

NAME: Tracy Wrenn
Printed Name

TITLE: Statewide Sourcing and Contracting Officer

DATE: 1/23/2023



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

**MODIFICATION #4
TO
CONTRACT NUMBER E194-81037
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY**

This MODIFICATION #4 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro", relating to the modification of Contract E194-81037 effective February 28, 2020, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement to add an additional line of products offered at a discount. All changes are effective at date of modification execution and shall be included in any subsequent modifications

Reference: Contract E194-81037, "Changes to the Contract" Both parties agree to add an additional line of products.

Category Description	Discount Off MSRP	List Pricing Effective Date
Workman UTX Series 4x4 UTX Vehicles	7%	Current Price

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY

BY: *Brad Hamilton*

NAME: Brad Hamilton
Printed Name

TITLE: Group Vice President

DATE: March 21, 2022

COMMONWEALTH OF VIRGINIA

BY: *Tracy Wrenn, VCO*

NAME: Tracy Wrenn, VCO, VCA
Printed Name

TITLE: Statewide Sourcing & Contracting Officer

DATE: 3/21/2022



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

MODIFICATION #3
TO
CONTRACT NUMBER E194-81037
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY

This MODIFICATION #3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro", relating to the modification of Contract E194-81037 effective February 28, 2020, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement to A.) Revise pricing schedule, B.) Add an additional line of products offered at a discount. All changes are effective at date of modification execution and shall be included in any subsequent modifications

- A. Reference:** Contract E194-81037, "Changes to the Contract."
Both parties agree to revise the Pricing Schedule per the Master Pricing Agreement file "NASPO ValuePoint #E194-81037 Master Pricing 07012021.pdf".
- B. Reference:** Contract E194-81037, "Changes to the Contract"
Both parties agree to add an additional line of products.

Category Description	Discount Off MSRP	List Pricing Effective Date
TORO Ventrac SSV	5%	Current Price

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY

BY: *Brad Hamilton*

NAME: Brad Hamilton
Printed Name

TITLE: Group Vice President

DATE: July 27, 2021

COMMONWEALTH OF VIRGINIA

BY: *Tracy Wrenn, VCA*

NAME: Tracy Wrenn, VCA
Printed Name

TITLE: Statewide Sourcing & Contracting Officer

DATE: July 27, 2021



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

MODIFICATION #2
TO
CONTRACT NUMBER E194-81037
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro", relating to the modification of Contract E194-81037 effective February 28, 2020, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement to A.) Revise pricing schedule. All changes are effective June 10, 2021 and shall be included in any subsequent modifications.

- A. Reference:** Contract E194-81037, "Changes to the Contract."
Both parties agree to revise the Pricing Schedule:

Category Description	Discount Off MSRP	List Pricing Effective Date
TORO VENTRAC 4500 Series Products	7%	Current Price
TORO Bullseye Products	5%	Current Price
TORO Sentinel Brand Irrigation Products	35%	Current Price
TORO Rain Master Brand Irrigation Products	40%	Current Price

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY

BY: *Brad Hamilton*

NAME: Brad Hamilton
Printed Name

TITLE: Group Vice President

DATE: June 10, 2021

COMMONWEALTH OF VIRGINIA

BY: *Danielle D. Keeton*

NAME: Danielle Keeton, CPPB, VCO, VCA
Printed Name

TITLE: Statewide Sourcing & Contracting Officer

DATE: 6/10/2021



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

MODIFICATION #1
TO
CONTRACT NUMBER E194-81037
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
THE TORO COMPANY

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, a Minnesota corporation, hereinafter referred to as the "Contractor" or "Toro", relating to the modification of Contract E194-81037 effective February 28, 2020, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement to A.) Revise Pricing Schedule, B.) Revise modified General Terms and Conditions: Vendors Manual, Anti-Discrimination, and Nondiscrimination to Contractors, C.) Add General Term and Condition: Civility in State Workplaces due to legislative changes and D.) Add Special Term and Condition: Federally Imposed Tariffs. All changes are effective January 1, 2021 and shall be included in any subsequent modifications.

- A. **Reference:** Contract E194-81037, "Price Escalation/De-escalation."
Both parties agree to revise Pricing Schedule – See attached document.
- B. **Reference:** Contract E194-81037, "Vendors Manual", "Anti-Discrimination", "Non-Discrimination to Contractors."

VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The 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".

ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender 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).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, 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 contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract 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 contract.

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.

NONDISCRIMINATION OF CONTRACTORS: A offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, 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 offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

C. Reference: Contract E194-81037, "Changes to Contract."

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.

D. Reference: Contract E194-81037, "Changes to Contract."

FEDERALLY IMPOSED TARIFFS: In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in contractor's costs to a level that renders performance under the Agreement impracticable, the Commonwealth may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed 25% of the additional tariff imposed on the goods imported or purchased by the contractor that are provided to the Commonwealth under this Agreement.

Prior to the Commonwealth agreeing to a price increase pursuant to this Section, the contractor must provide to the Commonwealth, the following documentation, all of which must be satisfactory to the Commonwealth:

- evidence demonstrating: (i) the unit price paid by contractor as of the date of award for the good or raw material used to furnish the goods to the Commonwealth under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commonwealth to verify that the tariff is the cause of the price change.

- a certification signed by contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commonwealth at a lower cost from a different source located outside of the country against which the tariff has been imposed.

- a certification signed by contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the contractor would otherwise be unable to perform under this Agreement without such price increase.

- as requested by the Commonwealth, written instructions authorizing the Commonwealth to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by contractor.

If the Commonwealth agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Agreement:

- During the Term and for five (5) years after the termination of this Agreement, contractor shall retain, and the Commonwealth and its authorized representatives shall have the right to audit, examine, and make copies of, all of contractor's books, accounts, and other records related to this Agreement and contractor's

costs for providing goods to the Commonwealth, including, but not limited to those kept by the contractor's agents, assigns, successors, and subcontractors.

- Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have the right to terminate this Agreement for the Commonwealth's convenience upon 15 days' written notice to contractor.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in the Commonwealth's contract price shall be reduced by the same amount and adjusted accordingly.

- Any material misrepresentation of fact by contractor relating in any way to the Commonwealth's payment of additional sums due to tariffs shall be fraud against the taxpayer's of the Commonwealth and subject contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

THE TORO COMPANY
BY: *Brad Hamilton*
NAME: *Brad Hamilton*
Printed Name
TITLE: *Group Vice President*
DATE: *12/8/2020*

COMMONWEALTH OF VIRGINIA
BY: *Danielle D. Keeton*
NAME: *Danielle D. Keeton*
Printed Name
TITLE: *Statewide Sourcing & Contracting Officer*
DATE: *12/8/2020*

TORO TURF EQUIPMENT DEALERS/DISTRIBUTORS

Virginia Statewide Distributor, Toro Zero Turn Z-Master and Wide Area Walk Behind Mowers

Turf Equipment & Supply Co. eVA ID: C9998 8015

Dorsey Run Road

Jessup, MD 20794 Contact: Ed

Washburn

Email: turfed@windstream.net Phone:

724-396-1414

Fax: 828-883-2426

Northern Virginia Distributor, Toro Commercial Mowers

(by county attached)

Turf Equipment & Supply Co. eVA ID: C9998 8015

Dorsey Run Road

Jessup, MD 20794

Contact: Brian Pardoe

Email: brianpardoe@turf-equipment.com

Phone: 800-827-3711

Fax: 410-799-6953

Central and Southern Virginia Distributor, Toro Commercial Mowers

(by county attached)

Smith Turf and Irrigation eVA ID: E3931 2201

Dabney Road

Richmond, VA 23230-0327 Contact:

Dan McGrory

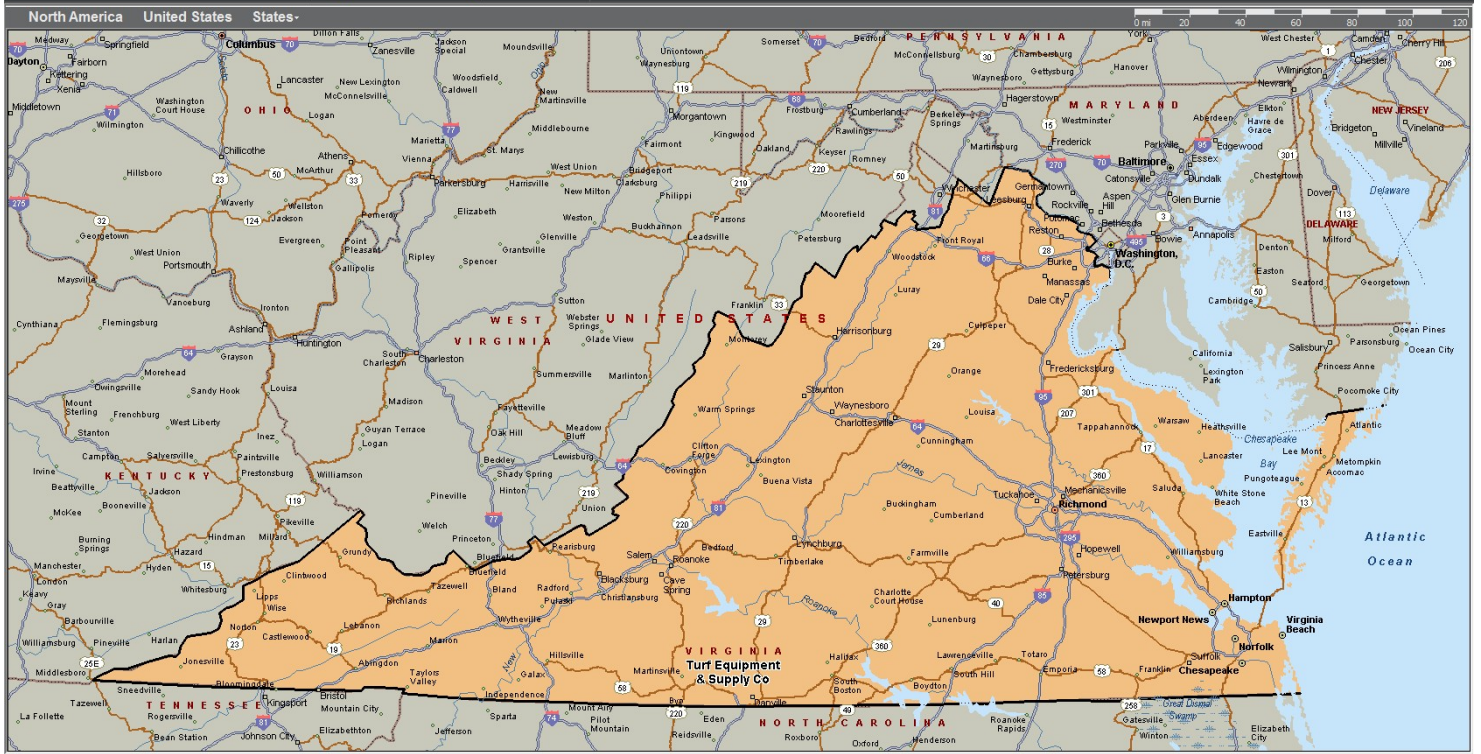
Email: dan.mcgrory@smithturf.com Phone:

804-355-6404

Fax: 804-358-9189

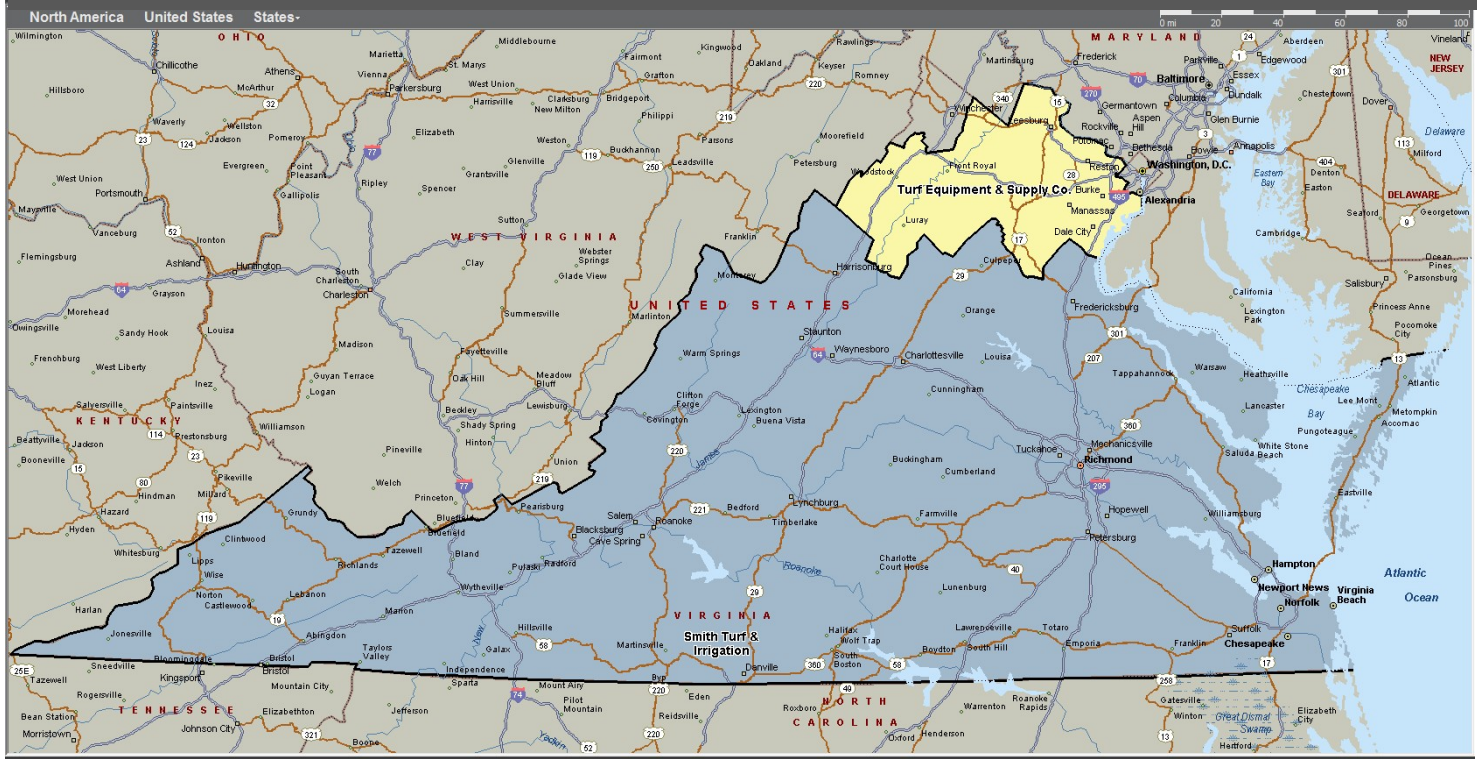
Toro Zero Turn Z-Master and Wide Area Walk Behind Mowers

■ Turf Equipment & Supply Co.



Toro Commercial Mowers

■ Smith Turf & Irrigation
■ Turf Equipment & Supply Co.



TORO SITEWORKS SYSTEM DEALERS

E&S Equipment

Contact: Everett Willis

Email: ebwjr@aol.com

Phone: 703-919-1379

Locations:

11715 Pump Station Way

Manassas, VA 20109

Land & Coates

Contact: Barden Winstead

Email: bwinstead@landandcoates.com

Phone: 757-461-5800

Locations:

110 Gainsborough Circle

Chesapeake, VA 23320

12911 Jefferson Ave.

Newport News, VA 23608

3760 E. Virginia Beach Blvd.

Norfolk, VA 23502

830 Poplar Hall Dr.

Norfolk, VA 23502

5808 Churchland Blvd.

Portsmouth, VA 23703

3775 Bonney Rd.

Virginia Beach, VA 23452

Smith Turf Care Equipment eVA ID: E3931

Contact: Matthew Machtay

Email: matthew.machtay@smithturf.com

Phone: 804-253-1025

Locations:

2201 Dabney Rd.

Richmond, VA 23230-0327

Phone: 804-253-1025

6831 George Washington Mem Hwy

Yorktown, VA 23692

Phone: 757-872-6660



GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

Master Agreement #: E194-81037

Contractor: THE TORO COMPANY

Participating Entity: COMMONWEALTH OF VIRGINIA

The following products or services are included in this contract portfolio:

- All products and accessories listed on the Contractor page on NASPO ValuePoint.

Master Agreement Terms and Conditions:

1. **SCOPE:** This addendum covers the Ground Maintenance Equipment Master Agreement led by the State of Virginia for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **PARTICIPATION:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the Commonwealth of Virginia. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official at the Virginia Department of General Services, Division of Purchases and Supply.
3. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

CONTRACTOR

Name:	The Toro Company Jon Stodola
Address:	8111 Lyndale Avenue South, Bloomington, MN 55420
Telephone:	612-597-3224
Email:	Jon.Stodola@toro.com
Website:	www.toro.com



GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

PARTICIPATING ENTITY

Name:	Commonwealth of VA Danielle Keeton, Statewide Sourcing and Contracting Officer
Address:	1111 E Broad Street, Richmond, VA 23219
Telephone:	804-225-2948
Email:	danielle.keeton@dgs.virginia.gov

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

4.1. 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.

4.2. 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.

4.3. CHANGES TO THE PARTICIPATING ADDENDUM

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

- A. The parties may agree in writing to modify the terms, conditions, or scope of the Participating Addendum. Any additional goods or services to be



GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

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 Master Agreement award. Any increase or decrease in the price resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Participating Addendum.

- B. The Purchasing Entity 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 Entity of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Entity's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Entity 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 Entity a credit for any savings. Said compensation shall be determined by one of the following methods:
1. By mutual agreement between the parties in writing; or
 2. 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 Entity's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 3. 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 Entity with all vouchers and records of expenses incurred and savings realized. The Purchasing Entity

GROUND MAINTENANCE EQUIPMENT
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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 Entity within thirty (30) days from the date of receipt of the written order from the Purchasing Entity. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the 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 Entity or with the performance of the Participating Agreement generally.

4.4. 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.

4.5. 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 the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Participating Addendum and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS

- A. 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 Participating Addendum.
- B. Employer's Liability - \$100,000.
- C. 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.
- D. 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.)

4.6. 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.

4.7. 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.

4.8. 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 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.

4.9. RENEWAL OF PARTICIPATING ADDENDUM

This Participating Addendum may be renewed by the Commonwealth upon written agreement of both parties for one year/two (2) successive one year periods, under the terms of the current Participating Addendum, and at a reasonable time (approximately 90 days) prior to the expiration.

4.10. EXCLUSIVITY OF TERMS AND CONDITIONS

No employee or agent of the Commonwealth or Purchasing Entity shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. Any documents signed by persons other than the Director, Division of Purchases & Supply or his/her authorized designee as identified herein shall have no validity or effect upon the Participating Addendum.

4.11. LOBBYING AND INTEGRITY

The Contractor shall not, in connection with this or any other Participating Addendum with the Commonwealth, 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 or public officer or employee.

GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

Upon request of the Commonwealth, the Contractor shall provide any type of information the Commonwealth deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described in the Master Agreement.

4.12. 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. Contractors should note that acceptance of payment by purchase card is **mandatory**.

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

GROUND MAINTENANCE EQUIPMENT
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- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

4.13. DELIVERY TO CORRECTIONAL INSTITUTIONS

The Contractor shall be responsible for adherence to the following guidelines as they pertain to delivering goods to correctional institutions, especially if the delivery 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 agency, which may reach beyond the scope of this Participating Addendum.
- 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 there from.
- C. There shall be no verbal discussion or physical contact between a Contractor's employees and inmates.
- D. Anyone bringing any inmate any item such as weapons, tools, food, drink, clothing, cigarette, matches, correspondence, printed or electronic media or assisting inmates to escape, is in violation of State Law and will result in prosecution.
- E. No weapon, alcohol, drugs or medication of any type is allowed on State property.
- F. Keys shall be removed from all vehicles and other mobile equipment at all times 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 any type of cutting tool, 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 being searched.

GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

- 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 liaison person between the Contractor and Institution. Unless otherwise stated, this person will be the Department Superintendent for whom the Contractor is performing the service.
- L. Vehicles may not be permitted to leave the facility until after the daily or routine security check has been performed.
- M. All Contractor's employees shall have a valid identification with photograph at all times for identification that is acceptable to the Institution. A valid DMV driver's license is acceptable. No persons will be permitted to enter the Institution without valid identification.

The Agency reserves the right to refuse entrance to anyone who appears, in the Agency's sole judgment, to be under the influence of drugs or alcohol or otherwise is impaired.

4.14. 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.

4.15. 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.

4.16. 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.

4.17. REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT (SCA) FEE

- A. CONTRACTOR'S QUARTERLY REPORT OF SALES: Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the DPS Contracting Officer. Failure to submit information in the required format and time may result in cancellation of the Participating Addendum.
- B. SURCHARGE ADJUSTMENT FEE: The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Participating Addendum. **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: SCA 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 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 termination or cancellation of the Participating Addendum.



GROUND MAINTENANCE EQUIPMENT
Led by the State of **Virginia**

C. SCHEDULE:

<u>Sales Report Period</u>	<u>Sales Months</u>	<u>Quarterly Report Due</u>
1st Quarter	Jan, Feb, Mar	April 15th
2nd Quarter	Apr, May, June	July 15th
3rd Quarter	July, Aug, Sept	October 15th
4th Quarter	Oct, Nov, Dec	January 15th

<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Quarterly 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 31st

D. The 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 all documentation necessary for any performance audit(s), 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.

4.18. "RESERVED"

4.19. 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.

4.20. LEASE AGREEMENTS: Commonwealth of Virginia State agencies, institutions, boards and authorities interested in utilizing this Contract to lease equipment must comply with The Department of Treasury, Master Equipment Leasing Program requirements. All other Commonwealth public entities must follow their own procurement regulations.

4.21. SUBCONTRACTORS: All contractors, dealers, and resellers authorized in the Commonwealth of Virginia, as shown on the dedicated contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

4.22. ORDERS: Any order 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.



GROUND MAINTENANCE EQUIPMENT
 Led by the State of Virginia

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: COMMONWEALTH OF VIRGINIA	Contractor: THE TORO COMPANY
Signature: <i>Danielle D. Keeton</i>	Signature: <i>Brad Hamilton</i>
Name: Danielle Keeton	Name: <i>Brad Hamilton</i>
Title: Statewide Sourcing and Contracting Officer	Title: <i>Group Vice President</i>
Date: 5/15/2020	Date: <i>5/15/2020</i>

For questions on executing a participating addendum, please contact:

NASPO VALUEPOINT

Cooperative Development Coordinator:	Jerilyn Bailey
Telephone:	850-296-0002
Email:	jbailey@naspovaluepoint.org

CONTRACTING OFFICER, PLEASE EMAIL FULLY EXECUTED PDF COPY OF THIS DOCUMENT TO PA@NASPOVALUEPOINT.ORG TO SUPPORT DOCUMENTATION OF PARTICIPATION AND POSTING IN APPROPRIATE DATA BASES.

COMMONWEALTH OF VIRGINIA – NASPO VALUEPOINT MASTER AGREEMENT

Master Agreement Number: E194-81037

THIS MASTER AGREEMENT entered into this 13 day of February 2020, by The Toro Company, hereinafter called the “Contractor” and Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply called the “Purchasing Agency.”

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

GENERAL PURPOSE: The Contractor shall provide Ground Maintenance Equipment to the Purchasing Agency as set forth in this Master Agreement for the following Categories:

Category 1 – Tractors

Category 2 – Tractor Towed PTO Driven Equipment

Category 3 – Off Road Utility Vehicles

Category 4 – Self Propelled Riding Mowers

Category 5 – Turf Maintenance Equipment


PERIOD OF PERFORMANCE: The initial term of this Master Agreement shall be for three years and is effective from February 28, 2020 through February 27, 2023, with two additional one-year renewal options.

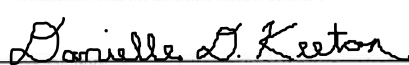
THIS MASTER AGREEMENT hereby consists of the following:

- (1) This signed document;
- (2) Attachment A: Scope of Work;
- (3) Attachment B: NASPO ValuePoint Master Terms and Conditions;
- (4) Attachment C: Commonwealth of Virginia General Terms and Conditions; and
- (5) The following documents incorporated by reference:
 - (a) Request for Proposal #377, including all exhibits and addendums, and
 - (b) The Contractor’s Proposal, including all clarifications and negotiations, to Request for Proposal #377.

In the event of any conflict, Attachment B will take precedence over all other documents.

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

CONTRACTOR:
By: 
Title: Group Vice President

PURCHASING AGENCY:
By: 
Title: Statewide Sourcing and Contracting Officer

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

ATTACHMENT A SCOPE OF WORK

This Scope of Work reflects the Statement of Needs from Request for Proposal (RFP) #377 and any changes identified in Addendums 1, 2, and 3 of the RFP. The specific Categories awarded to the Contractor are listed on the signature page of this Master Agreement.

SCOPE OF WORK:

A. GENERAL REQUIREMENTS

The Contractor shall provide new equipment and warranty work with replacement parts, therefore a dealer network is required for complete coverage of all states and territories of the United States.

The Contractor shall provide a complete listing of all dealers/distributors within the U.S. and U.S. Territories. Participating States will have an opportunity to have a listing of the dealers/distributors located within their State included in their Participating Addendum.

B. EQUIPMENT

1. Equipment offered under the Contract shall be new and current models with the exception of any products offered on a Contractor's Hot List. All equipment shall comply with any current applicable safety or regulatory standards or codes.
2. Contractor may request to delete products as needed and add new products as soon as they are available to dealers/distributors so there is no delay in products being readily available to Authorized Users. All requests must be approved by the Contracting Officer.
3. Contractor must immediately notify Authorized User when they order an obsolete or out of stock product and of any equivalent substitutes. Substitutions are not permitted unless agreed upon in writing by the Authorized User and must be at the same or increased discount of percentage based on the contract award.
4. Contractor shall provide with equipment, an operations and maintenance manual with wiring diagrams and parts list. The manual may be in electronic format.
5. Grounds Maintenance Equipment is not considered to include the following:
 - a. Heavy construction equipment
 - b. Skid steers or mini-excavators
 - c. Trailers
 - d. Aerial lifts or bucket trucks

6. Non-contract or allied equipment will be permitted to be procured at the same time as contract equipment to allow for the contract equipment to operate within safety guidelines (e.g., federal, state, agency) or to function as needed. The addition of the non-contract or allied equipment will complete or enhance the operation or provide an additional level of safe operation of the contract equipment. Non-contract or allied equipment are considered to be products, implements, attachments, parts, and bundles not manufactured by the Contractor but in some instances branded by the Contractor.

The following are typical examples of these procurements:

- a. Agency purchasing a contracted base model unit wants a service parts package to take care of the first required oil change on the unit.
 - b. Agency needs to purchase a John Deere tractor with an implement for specialty mowing purposes such as a non-contract/Allied “over the guard rail” boom mower.
 - c. Agency needs to purchase a John Deere tractor for roadside mowing with the tractor tires filled with non-contract/Allied fluid as a ballasting agent in order to maintain stability when performing hillside mowing.
 - d. Agency has a requirement for mounted non-contract/Allied lighting packages on equipment for safety and visibility purposes.
7. Non-contract/allied equipment as defined above may be included on a purchase order as long as the equipment is related to and compatible with the contract equipment being purchased. Stand-alone non-contract/allied equipment purchases shall not be permitted.
 8. The price of the non-contract/allied equipment will be negotiated between the Contractor and the Authorized User. Non-contract/allied equipment must be specified on the purchase order as “non-contract” items. Authorized Users must comply with their State’s procurement policies and procedures for the purchase of non-contract/allied equipment.
 9. Contractor confirms that to the extent non-contract/allied equipment is included on a purchase order with contract equipment, the Contractor will not void any applicable equipment warranty(ies), provided that the following conditions are met:
 - a. Non-contract/allied equipment is properly mounted or installed by an authorized dealer/distributor or other installer approved by the Contractor;
 - b. Any warranty claim for contract equipment is warrantable under the terms and limitations of the applicable Contractor’s product warranty(ies); and
 - c. The Authorized User provides supporting documentation upon request by the Contractor for verification of warranty claim

C. CONTRACT PRICING

Contractor will provide complete catalog current price list contracts to provide for new grounds maintenance equipment to be made available for purchase. The purchase price shall be the OEMs current price book/product list (MSRP/MPL) in effect at the time the order is placed minus the Contractor's negotiated percentage discount. Authorized Users will reference the Contractor's discount table and contact their local authorized dealer/distributor for specific pricing or use another method provided by the Contractor.

At any time throughout the term of the contract, Contractor may submit to the Contracting Officer, Hot List Program Pricing as long as those products are clearly labeled as such. This option must be made available to all Authorized Users.

D. WARRANTY

Contractor agrees that the products furnished under any resulting contract shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded to the Commonwealth of Virginia or Participating States by any other clause of any resulting contract. The Contractor warrants that at the time of delivery, all equipment purchased under any resulting contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this RFP.

All warranty work performed and parts/materials supplied shall meet OEM warranty requirements. Equivalent substitutions must be approved by the Authorized User's contact person prior to installation. Warranty work performed not meeting specifications or found to be defective and shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the authorized user.

All equipment warranties shall start on the date the equipment is purchased by the Authorized User and shall be for the full term as stated in the warranty. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Authorized User requesting the service. The following information shall be provided in order to determine ownership of the equipment:

- Name of Authorized User, if applicable.
- Make, Model, and VIN of equipment
- Control number/Inventory Number of Authorized User

Repairs made that are covered by a warranty shall not be paid for by the Authorized User. The Contractor or distribution network shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of any resulting contract shall be employees/agents of the Contractor or distribution network and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state owned equipment in the Contractor's possession.

E. TRANSPORTATION CHARGES

1. Freight

Freight is FOB from the OEM to the dealer network locations within the contiguous United States or to the nearest port of embarkation for all Participating Entities outside of the contiguous United States. Orders for less than the minimum order of \$500 will be shipped prepaid and added to the invoice. Contractor shall not add freight charges for partial

shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500. Contractor shall provide delivery costs policy guidelines for your dealers, whether it is a set rate per loaded mile or if the dealer is allowed to set the rate.

2. Delivery and Set-Up Fees

Delivery and set-up fees may be an optional charge from the dealer to the Authorized User and shall be prepaid and added to the invoice. If a delivery fee is charged, it may be by loaded mile based on Google Maps or a dealer set fee. Delivery and set-up fee charges must be annotated on the quote/invoice as a separate line item. Authorized Users reserve the right to pickup equipment at no charge.

All equipment shall be delivered assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Authorized User. Liability for product delivery remains with the Contractor until delivered and accepted. Damaged or non-operational equipment or products may be rejected. If the damage is not detectable or readily apparent at the time of delivery, Contractor must allow equipment to be returned within a reasonable time at no cost to the Authorized User. Authorized Users reserve the right to inspect all equipment upon delivery or within a reasonable time after delivery if inspection could not be performed upon delivery. Contractor must make arrangements for the return of damaged equipment at no cost to the Authorized User.

Delivery shall be made in accordance with instructions on the purchase order from each Authorized User. The Contractor shall seek clarification from the Authorized User if there is a discrepancy between the purchase order and what is listed on the contract.

F. RETURNS

Products may be exchanged for credit in compliance with the Contractor's published return goods policy. This policy may include a restocking fee.

G. LEASING AND FINANCING

Procurement and other applicable laws of some purchasing entities may permit the use of leasing or alternative financing methods for the acquisition of products under the contract. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Authorized User. Authorized User is to follow the policy and guidelines outlined by their purchasing authority or state regulations and statutes.

H. TRADE-IN

Authorized User and Contractor may negotiate trade-in allowances.

ATTACHMENT B
NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement ;
- (4) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. Terms set forth in a PO which contradict or expand the terms of this Master Agreement will be void and unenforceable, unless otherwise required by law.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications, which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement or **Master Ordering Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school

districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for 2 year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and

Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint

eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org/Account/Login?ReturnUrl=%2F>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if

Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CDROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Attachment L.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. Reports will be submitted by email or other electronic means. If any report is submitted on a USB drive or other physical device, ownership of the physical device containing the report will transfer to the recipient. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section. ?-[Toro]

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint

personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate, either remotely or in-person, in an annual contract performance review with the Lead State and NASPO ValuePoint. The annual contract performance review may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years after] award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction

process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

13. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may

in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

- a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.
- d. The warranty period shall begin upon Acceptance.

16. Payment

Unless otherwise agreed upon in a Participating Addendum, payment after acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and

made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

19. License of Pre-Existing Intellectual Property

Unless otherwise set forth in a separate license agreement as part of a purchase, Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

20. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

21. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the

Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (1) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in

addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section to the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

23. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, and other third parties.

25. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key personnel managing or providing services under the Master Agreement in writing within 10 calendar days of the change. The Contractor agrees to propose replacement key personnel having substantially equal or better skills as was possessed by the key person proposed and evaluated in the Contractor's proposal.

26. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Cancellation

Cancellation of this Master Agreement is governed by Attachment C, section 3, Cancellation of Contract. Any Participating Entity may cancel its participation upon 30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

28. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

29. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 10 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and

- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

e. Attachment C, including the Contractual Disputes provision in section 13, shall apply only to Participating and Purchasing Entities in the Commonwealth of Virginia unless those provisions are incorporated by reference into a Participating Addenda or Orders by other entities.

30. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s),

error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

33. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of

any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

34. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

35. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action. ?-[Toro]

36. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

**ATTACHMENT C
COMMONWEALTH OF VIRGINIA
GENERAL TERMS AND CONDITIONS**

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

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

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

C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E). In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

e. 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 contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

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

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

G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs: Failure to submit a proposal on the official state form provided for that purpose may be a cause

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

I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or 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 awarded a contract under this solicitation 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 contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

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

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

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

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

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

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

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

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **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 bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

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

Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency 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 agreement.

Z. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

AA. 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.



COMMONWEALTH of VIRGINIA

*Department of General Services
Division of Purchases and Supply*

J. Peter Stamps, CPPO, VCM, VCO
Director

P.O. Box 1199
Richmond, VA 23218-1199
Voice: (804) 786-3842

NOTICE OF AWARD

Contract No. E194-81037

Date: January 24, 2020

eVA Vendor No. VS0000085329

Name: The Toro Company

Address: 8111 Lyndale Ave S., Bloomington, MN 55420

Proposal Response Date: August 15, 2019

In Response to: RFP #377

To Furnish: Grounds Maintenance Equipment

During the Period: February 24, 2020 – February 23, 2023 with two (2) optional one-year renewals*

A handwritten signature in black ink that reads "Danielle O. Keeton".

(Name)

Statewide Sourcing & Contracting Officer

*Dates are subject to change based on the finalization of the award process which shall include contract signing and supplier kickoff meeting.



COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES & SUPPLY (DPS)
1111 East Broad Street, Richmond, Virginia 23219

NOTICE OF INTENT TO AWARD

DATE: January 10, 2020

COMMODITY: 51500 - Grounds Maintenance Equipment

IN RESPONSE TO RFP # RFP #377 Dated June 28, 2019

CONTRACTOR(S)/VENDOR(S): Bobcat Company

CNH Industrial America LLC – New Holland

Deere & Company

Husqvarna Professional Products Inc.

Hustler Turf Equipment, Inc.

The Toro Company

Records for this procurement are now available for inspection by any Offeror on this RFP. If you wish to inspect the files please contact Danielle Keeton @ danielle.keeton@dgs.virginia.gov.

Contract Officer: *Danielle D. Keeton*
Danielle Keeton



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 3 TO ALL OFFERORS

Request For Proposal: RFP #377
Commodity: 51500, 02000
Date: August 16, 2019
Revised Proposal Due: September 4, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 1, Proposal Due Date:** Change to read "Due Date/Time: September 4, 2019 at 1:00PM EDT"
2. **Reference Attachment I, Pricing Schedule:** Delete and replace with attached Pricing Schedule

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

Very truly yours,

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948

Name of Firm

Signature / Title

Date



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 2 TO ALL OFFERORS

Request For Proposal: RFP #377
Commodity: 51500, 02000
Date: July 19, 2019
Proposal Due: August 21, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 5, Background – NASPO Value Point, Section B, Participating States:** Change to read: “List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, Vermont, Illinois, and Maryland.”
2. **Add the following document:**
Maryland Terms and Conditions

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

Very truly yours,

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948

Name of Firm

Signature / Title

Date



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

1111 East Broad Street
P.O. Box 1199
Richmond, Virginia 23218-1199
(804) 786-0078
FAX (804) 786-5413

ADDENDUM NO. 1 TO ALL OFFERORS:

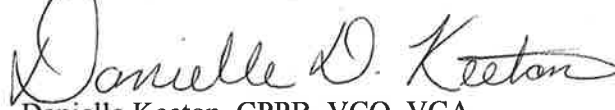
Request For Proposal: RFP #377
Commodities: 51500, 02000
Date: July 11, 2019
Proposal Due: August 21, 2019 at 1:00 PM EDT

The above is hereby changed to read:

1. **Reference Page 1, Pre-Proposal Conference:** Change to read, "An Optional Pre-proposal Conference will be held at 2:00 PM Eastern Daylight Time on July 23, 2019, at the Patrick Henry Building, 1111 East Broad Street, Room 1023, Richmond, VA 23219."
2. **Reference Page 4, Purpose:** Change to read, "The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS") is issuing this formal request for sealed proposal ("RFP") # 377 to establish one or more Master Ordering Agreements ("Master Agreement" or "Contract" or "Agreement") through competitive negotiation with experienced qualified OEMs for GROUNDS MAINTENANCE EQUIPMENT and services."
3. **Reference Page 5, Lead State, Solicitation Number and Contract Administrator:** Change to read, "The Commonwealth of Virginia is the Lead State and issuing office for this solicitation and all subsequent amendments relating to it. The solicitation reference number is RFP# 377. This number must be referenced on all proposals, correspondence, and documentation relating to the RFP."
4. **Reference Page 5, Background – NASPO Value Point, Section B, Participating States:** Change to read: "List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, Vermont, Illinois."
5. **Add the following document:**
 - Illinois Terms and Conditions

Note: A signed acknowledgment of this addendum must be received at the location indicated on the RFP either prior to the proposal due date and hour or attached to your proposal. Signature on this addendum does not substitute for your signature on the original proposal document. The original proposal document must be signed.

Very truly yours,

A handwritten signature in cursive script that reads "Danielle D. Keeton". The signature is written in black ink and is positioned above the printed name and title.

Danielle Keeton, CPPB, VCO, VCA
Statewide Sourcing and Contracting Officer
Phone: 804-225-2948



COMMONWEALTH of VIRGINIA

DIVISION OF PURCHASES and SUPPLY
1111 EAST BROAD STREET, 6th FLOOR, RECEPTIONIST/BID RECEIVING, RICHMOND, VA 23219

REQUEST FOR PROPOSAL (RFP) # 377 Grounds Maintenance Equipment NIGP Commodity Codes: 51500, 02000

Issue Date: June 28, 2019 • Due Date/Time: August 21, 2019 at 1:00PM EST
PROPOSALS RECEIVED AFTER THE DUE DATE AND TIME WILL NOT BE CONSIDERED
PROPOSALS WILL NOT BE ACCEPTED BY FAX OR EMAIL

DPS Statewide Sourcing & Contracting Officer: Danielle Keeton, CPPB, VCO, VCA
E-Mail: Danielle.keeton@dgs.virginia.gov

USING AGENCIES : All Commonwealth of Virginia agencies, institutions of higher education, or other public bodies as defined in Code of Virginia §2.2-4301, to include private institutions of higher education chartered in Virginia as defined in Code of Virginia §2.2-1120, NASPO ValuePoint Participating Entities, and any other public bodies which may be added through participating addendum to any Agreement.

PRE-PROPOSAL CONFERENCE: An Optional Pre-proposal Conference will be held at 2:00 Eastern Daylight Time on July 23, 2019, at the Patrick Henry Building, 1111 East Broad Street, Room 1023, Richmond, VA 23219. Potential offerors who intend to submit a proposal are encouraged to attend in person or via teleconference. Any changes to the RFP will be issued in an amendment, which must be signed and included in the offeror's proposal. Refer to Section IX for information.

CLARIFICATION OF RFP: It is the Offeror's sole responsibility to 1) Contact DPS Statewide Sourcing & Contracting Officer, Danielle Keeton at Danielle.keeton@dgs.virginia.gov in writing with questions about the specifications or other solicitation documents no later than 5:00 PM Eastern Daylight Time on August 6, 2019. Verbal requests for information will not be accepted. Any revisions to the solicitation will be made only by amendment; and 2) Obtain all current information (i.e., amendments, notifications, extensions, changes, cancellation, or awards) from the eVA website <http://www.eva.virginia.gov> and clicking on "Business Opportunities."

PERIOD OF CONTRACT: Three (3) year initial term, with up to two (2) additional one-year renewal options.

AWARD POSTING: Upon the award or announcement of a notice to award a Contract as a result of this solicitation, the Commonwealth of Virginia through the Department of General Services, Division of Purchases and Supply, will publicly post such notice online at <http://www.eva.virginia.gov> for a minimum of ten (10) calendar days. Contracts will be awarded to eVA registered vendors only.

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

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

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that request for proposal.

RETURN OF THIS PAGE IS REQUIRED

**GROUNDS MAINTENANCE
EQUIPMENT RFP# 377**

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State of Vermont	

I. DEFINITIONS

The following definitions apply to this solicitation. Additionally, [Attachment A](#) contains definitions of terms used in the NASPO ValuePoint Master Agreement Terms and Conditions and in this solicitation.

- **Authorized Users** - All Commonwealth state agencies, institutions of higher education, and other public bodies and entities authorized to use the Master Agreement, pursuant to §§ 2.2-4301 and 2.2-4304 of the Code of Virginia, including private institutions of higher education chartered in Virginia as defined in Code of Virginia §2.2-1120 and granted tax-exempt status under Internal Revenue Code §501(c)(3); and NASPO ValuePoint Participating State governments (i.e., departments, agencies, institutions, etc.) institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the U.S., and other eligible entities subject to approval of the individual state procurement official and compliance with local statutory and regulatory provisions.
- **Contractor** - person or entity delivering products or performing services under all contractual provisions stipulated under any Master Agreement(s) resulting from this RFP.
- **Department of Small Business and Supplier Diversity (DSBSD)** - Commonwealth of Virginia agency dedicated to enhancing the participation of small, women and minority-owned businesses in Virginia's procurement process.
- **eVA** - Commonwealth of Virginia's Internet electronic procurement solution website portal <http://www.eva.virginia.gov> that streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with Commonwealth of Virginia state agencies and public bodies. Reference Attachment B Item X entitled "*eVA Business-To-Government Vendor Registration, Contracts, and Orders*" for important information on eVA. Obtain more information on eVA at www.eva.virginia.gov and click on "I Sell to Virginia".
- **Hot List Program (or Equivalent) Pricing** – Contractor's list of discounted, liquidated close-out or discontinued equipment or products. This list may include promotional prices.
- **Lead State** - state that a) develops and issues the Request for Proposal (RFP); b) centrally manages the sourcing and negotiation process; c) awards the resulting contract(s), if any, which result from the sourcing process, and; d) manages or administers any resulting contract(s) thereafter, over the full term/s of any agreement(s). In this procurement, the Lead State is the Commonwealth of Virginia and all questions, comments, or any other communication regarding this RFP shall be directed solely to the DPS Statewide Sourcing & Contracting Officer named on the face of this solicitation.
- **Master Ordering Agreement or Master Agreement** - underlying agreement executed by and between the Commonwealth, acting on behalf of NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
- **NASPO ValuePoint** - NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school

districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia.

- **OEM** – Original Equipment Manufacturer
- **Offeror** - the company or firm submitting a proposal in response to this RFP.
- **Order or Purchase Order** - any eVA order, purchase order, sales order, contract, or other document used by a Participating Entity to order the products and services on the Master Agreement.
- **Participating Addendum** - bilateral agreement executed by a contractor and a Participating Entity, which incorporates a Master Agreement resulting from this solicitation, and any other additional Participating Entity-specific language or any other requirements (e.g., ordering procedures, other terms and conditions, or other business practices that are specific to the Participating Entity).
- **Participating Entity** - a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- **Participating State** - any state, the District of Columbia, or any of the territories of the U.S. that are listed in the RFP as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.
- **Proposal** - official written proposal submitted by an Offeror in response to this Request for Proposal.
- **Purchasing Entity** - a state, city, county, district, other political subdivision of a state, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- **Request for Proposal or "RFP"** - the entire solicitation document, including all parts, sections, exhibits, attachments, and amendments.
- **Small Business** - a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business. (Code of Virginia, § 2.2-4310)
- **Sourcing Team** - a group comprised of subject matter experts and procurement experts from Participating Entities that are most likely to use any resulting Master Agreement(s).

II. PURPOSE

The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply ("Commonwealth" or "DGS" or "DPS") is issuing this formal request for sealed proposal ("RFP") #E194-377 to establish one or more Master Ordering Agreements ("Master Agreement" or "Contract" or "Agreement") through competitive negotiation with experienced qualified OEMs for GROUNDS MAINTENANCE EQUIPMENT and services. Offerors shall be able to provide the specific equipment listed on a brand name or equivalent basis through their designated or authorized distribution network to the Commonwealth of Virginia and NASPO ValuePoint Participating States. The initial term of the Agreement will be three (3) years with two (2) additional one-year renewal options.

Any Contract resulting from the RFP will be an optional use Agreement established and managed by the Commonwealth of Virginia as the Lead State. Products and services ordered from any contract awarded through this solicitation will be available on an “as-needed” basis under the same cost and terms and conditions agreed to in the Master Agreement.

III. BACKGROUND – NASPO VALUEPOINT

- A. NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint.

NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information, consult the following websites www.naspovaluepoint.org and www.naspo.org

- B. Participating States: In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement(s):

List of States: Colorado, Hawaii, Maine, Missouri, Montana, North Dakota, South Dakota, Utah, and Vermont

Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States’ terms and conditions. The Participating States shall negotiate these terms and conditions directly with the Contractor.

IV. LEAD STATE, SOLICITATION NUMBER AND CONTRACT ADMINISTRATOR

The Commonwealth of Virginia is the Lead State and issuing office for this solicitation and all subsequent amendments relating to it. The solicitation reference number is RFP# E194-377. This number must be referenced on all proposals, correspondence, and documentation relating to the RFP.

An Offeror and any interested persons shall direct all questions **in writing**, concerning the procurement process to the DPS Statewide Sourcing & Contracting Officer including all technical requirements of the RFP, contractual requirements, requests for approval, change, clarification, the award process, and any other questions arising from this solicitation, and any resulting Master Agreement(s), if any. The Commonwealth’s DPS Statewide Sourcing & Contracting Officer, identified below, is the Lead State Contract Administrator and single-point-of-contact during the entire procurement process and for any resulting contracts.

Danielle Keeton, CPPB, VCO, VCA
DPS Statewide Sourcing & Contracting
Officer Commonwealth of Virginia
Department of General Services, Division of Purchases and Supply
1111 East Broad Street
Richmond, VA 23219
Email: Danielle.Keeton@dgs.virginia.gov
Phone: 804-225-2498

V. STATEMENT OF NEEDS

The objective of this solicitation is to obtain the lowest cost based on a pricing structure of a firm percentage off the most Current Price/Product List. This solicitation will establish multi-state Master Agreements to be utilized by the Commonwealth of Virginia and NASPO ValuePoint Participating States. The award of multiple Master Agreements with OEMs will greatly reduce administrative costs to Authorized Users resulting in additional savings for all who procure grounds maintenance equipment.

In anticipation of high volume purchasing, it is expected that all resulting contracts will offer the most attractive discounts available. In addition, multi-unit discounts are encouraged as a value-added component of the pricing structure.

This RFP is designed to provide an interested Offeror with sufficient information to submit a proposal meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offeror is encouraged to expand upon the specifications to add service and value consistent with Participating States requirements; therefore, any submitted proposal should:

1. Be fully complete;
2. Be comprised of leading edge business processes and practices;
3. Be demonstrably more effective and efficient than any current statewide processes; and
4. Consist of extremely aggressive pricing.

Historical Sales for the current contracts are shown below:

Total sales for the period of 2013 through the first quarter of 2019 were \$57,768,149.

Resulting contracts represent significant sales opportunities; however, no minimum or maximum level of sales volume for any awarded contracts is guaranteed or implied nor is there a guarantee of the number of individual Purchase Orders which might be issued nor the dollar amount of any individual Purchase Order or charge card purchases or their aggregate amount.

A. General Requirements

The Commonwealth desires a single source of responsibility with an OEM offering a broad scope of equipment for any resulting contracts. Only OEMs with dealer networks in all states and territories are encouraged to submit a proposal, as this will be a multiple award contract for both new equipment and warranty work with replacement parts, therefore a dealer network is required for complete coverage of all states and territories of the United States. Proposals submitted by dealers/distributors on behalf of a manufacturer will not be accepted. Offeror shall provide a complete listing of all dealers/distributors within the U.S. and U.S. Territories with their proposal response. After award, each Participating State will have an opportunity to have a listing of the dealers/distributors located within their State included in their Participating Addendum.

B. Equipment

1. Equipment offered under the Contract shall be new and current models with the exception of any products offered on a Contractor's Hot List. All equipment shall comply with any current applicable safety or regulatory standards or codes.
2. Contractor may request to delete products as needed and add new products as soon as they are available to dealers/distributors so there is no delay in products being readily available to Authorized Users. All requests must be approved by the Contracting Officer.

3. Contractor must immediately notify Authorized User when they order an obsolete or out of stock product and of any equivalent substitutes. Substitutions are not permitted unless agreed upon in writing by the Authorized User and must be at the same or increased discount of percentage based on the contract award.
4. Contractor shall provide with equipment, an operations and maintenance manual with wiring diagrams and parts list. The manual may be in electronic format.
5. Grounds Maintenance Equipment is not considered to include the following:
 - a. Heavy construction equipment
 - b. Skid steers or mini-excavators
 - c. Trailers
 - d. Aerial lifts or bucket trucks
6. Non-contract or allied equipment will be permitted to be procured at the same time as contract equipment to allow for the contract equipment to operate within safety guidelines (e.g., federal, state, agency) or to function as needed. The addition of the non-contract or allied equipment will complete or enhance the operation or provide an additional level of safe operation of the contract equipment. Non-contract or allied equipment are considered to be products, implements, attachments, parts, and bundles not manufactured by the Contractor but in some instances branded by the Contractor.

The following are typical examples of these procurements:

- a. Agency purchasing a contracted base model unit wants a service parts package to take care of the first required oil change on the unit.
 - b. Agency needs to purchase a John Deere tractor with an implement for specialty mowing purposes such as a non-contract/Allied "over the guard rail" boom mower.
 - c. Agency needs to purchase a John Deere tractor for roadside mowing with the tractor tires filled with non-contract/Allied fluid as a ballasting agent in order to maintain stability when performing hillside mowing.
 - d. Agency has a requirement for mounted non-contract/Allied lighting packages on equipment for safety and visibility purposes.
7. Non-contract/allied equipment as defined above may be included on a purchase order as long as the equipment is related to and compatible with the contract equipment being purchased. Stand-alone non-contract/allied equipment purchases shall not be permitted.
8. The price of the non-contract/allied equipment will be negotiated between the Contractor and the Authorized User. Non-contract/allied equipment must be specified on the purchase order as "non-contract" items. Authorized Users must comply with their State's procurement policies and procedures for the purchase of non-contract/allied equipment.
9. Offeror confirms that to the extent non-contract/allied equipment is included on a purchase order with contract equipment, the Contractor will not void any applicable equipment warranty(ies), provided that the following conditions are met:
 - a. Non-contract/allied equipment is properly mounted or installed by an authorized dealer/distributor or other installer approved by the Contractor;
 - b. Any warranty claim for contract equipment is warrantable under the terms and limitations of the applicable Contractor's product warranty(ies); and
 - c. The Authorized User provides supporting documentation upon request by the Contractor for verification of warranty claim.

C. Contract Pricing

This competitive solicitation will develop "catalog discounts" on complete catalog current price list contracts to provide for new grounds maintenance equipment to be made available for purchase. The purchase price shall be the OEMs current price book/product list (MSRP/MPL) in effect at the time the order is placed minus the Contract's negotiated percentage discount. Authorized Users will reference the Contractor's discount table and contact their local authorized dealer/distributor for specific pricing or use another method provided by the Contractor.

At any time throughout the term of the contract, Contractor may submit to the Contracting Officer, Hot List Program Pricing as long as those products are clearly labeled as such. This option must be made available to all Authorized Users.

D. Warranty

Offeror agrees that the products furnished under any resulting contract shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded to the Commonwealth of Virginia or Participating States by any other clause of any resulting contract. The Offeror warrants that at the time of delivery, all equipment purchased under any resulting contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this RFP.

All warranty work performed and parts/materials supplied shall meet OEM warranty requirements. Equivalent substitutions must be approved by the Authorized User's contact person prior to installation. Warranty work performed not meeting specifications or found to be defective and shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the authorized user.

All equipment warranties shall start on the date the equipment is accepted by the Authorized User and shall be for the full term as stated in the warranty. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Authorized User requesting the service. The following information shall be provided in order to determine ownership of the equipment:

- Name of Authorized User, if applicable.
- Make, Model, and VIN of equipment
- Control number/Inventory Number of Authorized User

Repairs made that are covered by a warranty shall not be paid for by the Authorized User. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of any resulting contract shall be employees of the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state owned equipment in the Contractor's possession.

E. Transportation Charges

1. Freight

Freight is FOB from the OEM to the dealer network locations within the contiguous United States or to the nearest port of embarkation for all Participating Entities outside of the contiguous United States. Orders for less than the minimum order of \$500 will be shipped prepaid and added to the invoice. Contractor shall not add freight charges for partial

shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500. Offeror shall provide delivery costs policy guidelines for your dealers, whether it is a set rate per loaded mile or if the dealer is allowed to set the rate.

2. Delivery and Set-Up Fees

Delivery and set-up fees may be an optional charge from the dealer to the Authorized User and shall be prepaid and added to the invoice. If a delivery fee is charged, it may be by loaded mile based on Google Maps or a dealer set fee. Delivery and set-up fee charges must be annotated on the quote/invoice as a separate line item. Authorized Users reserve the right to pickup equipment at no charge.

All equipment shall be delivered assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Authorized User. Liability for product delivery remains with the Contractor until delivered and accepted. Damaged or non-operational equipment or products may be rejected. If the damage is not detectable or readily apparent at the time of delivery, Contractor must allow equipment to be returned within a reasonable time at no cost to the Authorized User. Authorized Users reserve the right to inspect all equipment upon delivery or within a reasonable time after delivery if inspection could not be performed upon delivery. Contractor must make arrangements for the return of damaged equipment at no cost to the Authorized User.

Delivery shall be made in accordance with instructions on the purchase order from each Authorized User. The Contractor shall seek clarification from the Authorized User if there is a discrepancy between the purchase order and what is listed on the contract.

F. Returns

Products may be exchanged for credit in compliance with the Contractor's published return goods policy. This policy may include a restocking fee.

G. Leasing and Financing:

Procurement and other applicable laws of some purchasing entities may permit the use of leasing or alternative financing methods for the acquisition of products under the contract. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Authorized User. Authorized User is to follow the policy and guidelines outlined by their purchasing authority or state regulations and statutes.

H. Trade-In

Authorized User and Contractor may negotiate trade-in allowances.

VI. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. General Requirements

It is the Offeror's responsibility to assure that their proposal package is received by the time and date indicated at the appropriate location. Late proposal packages shall be date and time stamped, marked "late" and retained in the procurement file unopened. Proposals will not be accepted by facsimile transmission or by electronic mail. The Offeror shall make no other distribution of the proposal. In order to be considered for selection, Offeror should submit a complete response to this RFP. There must be:

1. One (1) original copy so marked; the original copy must contain:
 - an ink signature;
 - a complete copy of the solicitation
 - all addenda issued with an ink signature
 - all attachments and any attachment requiring a signature must be an ink signature
2. One (1) hard copy of the proposal and one (1) electronic copy (flash drive preferred) of the proposal. The electronic copy shall have the proposal as one (1) file and the pricing as one (1) file. All other documents shall be combined as one (1) file in Adobe PDF format.
3. If the proposal contains proprietary information, submit one (1) electronic copy (flash drive preferred) that DOES NOT contain the proprietary information, and mark it as a REDACTED. The redacted copy shall be an exact copy of your proposal excluding redacted sections.

B. Proposal Preparation

An authorized representative of the Offeror must sign any submitted proposal.

All required information should be submitted. If an Offeror fails to submit all information requested, the Commonwealth of Virginia may require prompt submission of missing information after the receipt of proposal; however, is under no obligation to do so. Failure to submit all required information may result in a lowered evaluation score of the proposal. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

Other proposal format requirements include:

1. The entire RFP, with signature page, must be included in the ORIGINAL proposal and the ELECTRONIC copy of the proposal. Additional copies must include the signed cover page, but need not include the remainder of the original RFP. See Section E, entitled "Specific Proposal Submission Instructions for submittal requirements.
2. No font smaller than 12 point.
3. 8½ x 11-inch page size (larger pages are allowed for figures or tables, but they should be folded into the overall proposal and used sparingly.)
4. There is an eighty (80)-page limit and all pages must be numbered. A page is one side of a sheet of paper.
5. The original and copy of the proposal should be bound (not with a rubber band or binder clip only) or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume. When using a three-ring binder, be sure that the binder is large enough to contain the entire document or use multiple binders.

C. Proprietary Information

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

The Offeror or Contractor must invoke the protection of this Section prior to, or upon submission of the data or other materials. The Offeror or Contractor must identify the data or other materials to be protected and justify in writing the explicit reasons that such protection is necessary. Failure to mark the data or other materials as proprietary or otherwise classified, will result in the data or other materials being released to Offerors or to the public as provided in the Virginia Freedom of Information Act." Offeror shall utilize Attachment D Proprietary Information Identification form for identifying proprietary information.

The classification of the entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may cause the proposal to not be considered.

D. Oral Presentation

Offerors who submit proposals in response to this RFP may be required to present an oral presentation of their proposal to the Sourcing Team. An oral presentation may provide an opportunity for the Offeror to clarify or elaborate on their proposal submittal. If held, DPS will schedule the time and location of these presentations. If the Offeror is selected to give an oral presentation, such Offeror may be requested to provide additional copies of their proposal at that time.

Oral presentations are an option of the Sourcing Team and may or may not, be conducted; therefore, proposals must be complete.

E. Specific Proposal Submission Instructions

Proposals should be as thorough and detailed as possible so that the Sourcing Team can properly evaluate the Offeror's capabilities to provide the required goods and/or services. Offeror is strongly advised to provide a proposal for the Commonwealth's evaluation purposes that represents their solution to all requirements described in the RFP, and which is complete, concise, comprehensive, simple and easy to understand. All Offerors are required to submit the following items, separated by tabs within the proposal. **Proposals that are not organized as described herein risk elimination from consideration or a lower evaluation score if the Commonwealth and Sourcing Team cannot find the required information specifically addressed by the Offeror. The Commonwealth and Sourcing Team reserve the right to request additional information and/or documentation at any time during the proposal evaluation process.**

TAB 1: RFP and Addenda

The complete RFP (without attachments) signed and filled out as required. These pages will not count against the 80-page submittal limit. Also, include an original signed copy of any addenda to this RFP that may be issued.

TAB 2: Methodology

Offeror shall submit a comprehensive proposal that convincingly and realistically depicts all of their capabilities, qualifications, resources, plans, and processes, which can successfully enable the fulfillment of requirements described in Section V, entitled "Statement of Needs." An Offeror should address in separate and distinct sections, each of the following topics.

1. Provide a detailed written plan explaining how the Offeror will provide services to the Commonwealth of Virginia and NASPO ValuePoint Participating States.
2. Provide a description of your relationship with your dealer/distributor network and a detailed plan that will assure that Offeror's dealer/distributor network would comply with the terms of any resulting contract concerning discount schedules, delivery, services, and warranty issues.
3. Provide a complete list of Offeror's dealers/distributors within the U.S. and U.S. Territories with their response to this solicitation to and include at a minimum the following information:
 - a. Contact name;
 - b. Phone number;
 - c. Fax number; and
 - d. Email address.
4. Provide a general description of the equipment, products and services that you are offering.
5. Describe your order process.
6. Describe your plan for price firmness, and process for conveying changes and notification of product additions, deletions or changes.
7. Describe any additional discount structure that may exist for educational institutions, if available.
8. Describe initial and ongoing communication plans and methods your company would employ in order to educate and train staff in regards to equipment purchases as well as problem solving and problem prevention issues with any purchases
9. Describe the features, attributes or capabilities that may improve functionality or differentiates your equipment to include any leading edge technologies.
10. Describe any value added attributes in detail such as training programs, fuel efficiency, green initiatives, or Small Business, Women-owned or Minority-owned initiatives or program.

TAB 3: Qualifications and Experience of Offerors

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

1. Organizational Structure
 - a. Provide a detailed written narrative statement of the company's organizational structure, history and locations, including the principals and their backgrounds.
 - b. Provide the legal name, address and the legal form of company (partnership, corporation, joint venture, etc.)

- c. Provide addresses of affiliates, subsidiaries or satellite service locations that will be used to support the contract.
2. Demonstrated Knowledge and Experience
 - a. Provide a detailed narrative describing the company's qualifications and background in providing these types of goods and services.
 - b. Describe specialized experience and capability in providing the type of goods and services required in the Statement of Needs along with demonstrated knowledge and experience outlined herein.
 - c. Describe your company's experience implementing and maintaining a similar solution and providing these goods and services described herein for other identified clients of comparable size or larger.
 - d. Provide resumes of Key Personnel to be assigned to the contract. Resumes shall include names, experience, and qualifications.
 3. Litigation

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

TAB 4: References

Provide a minimum of three (3) references. Preferably, these references would have active accounts maintained over the past two (2) years. Include contact information, phone number and email address of current contacts. See Attachment F, entitled "Vendor Data Sheet."

TAB 5: Proposed Price Plan

1. Pricing the Offeror provides in Attachment I, Pricing Schedule will be used for evaluation purposes. Offerer shall submit their pricing in Excel format. Reference the tab on the Pricing Schedule for minimum requirements or specifications.
2. The categories listed in the Pricing Schedule describe a market basket of grounds maintenance equipment based on historical sales in the Commonwealth of Virginia and Participating States.
3. Offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the proposal to enable the Commonwealth to determine if the product offered meets the requirements of the proposal. Failure to do so may cause the proposal to be considered nonresponsive.
4. Offerors are encouraged to propose quantity, volume or multi-unit discounts.
5. Describe your pricing model and provide a percentage discount table (whole percentages only) for equipment categories offered. This table should include any available options. Examples of product categories are: Turf Equipment, Golf Equipment, Ag Equipment, Snow Equipment, Tractors, and Attachments/Implements.
6. Submit current electronic Manufacturer's National Published Price List for the basic units with all standard equipment, and for all associated add-on attachments/implements that will allow

Authorized Users to change the configuration of the basic unit to fit their needs. Contractor's name and address must appear on all catalogs and price lists. If no such national published price lists exist, Offeror should clearly state this within their proposal response. It will be the responsibility of the Offeror to provide acceptable documentation concerning a reasonable price list.

7. Indicate the brand or equivalent on the Pricing Schedule listed in Attachment I. Offeror should indicate any deviations from the brand name listed with the appropriate exception and documentation. Preference may be given to Offerors who propose the most complete product line within each category. The Commonwealth reserves the right to obtain technical data and to request clarification when deemed necessary.

TAB 6: Attachments

Include the following attachments in this section:

- Attachment D: Proprietary Information Identification Form
- Attachment E: Exceptions to RFP
- Attachment F: Vendor Data Sheet to be included in Tab 4 "References".
- Attachment G: Virginia State Corporation Commission form
- Attachment H: Small Business Subcontracting Plan
- Attachment I: Pricing Schedule to be included in Tab 5 "Proposed Price Plan".
- Attachment J: NASPO ValuePoint Intent to Participate State List

TAB 7: Appendices, Data, and Other Submissions

1. Describe in detail your warranty program and coverages to include any limitations, conditions or requirements, and claims procedure. Provide a copy of your warranty
2. Provide a detailed description of your freight, shipping and delivery policies/programs to include shipping outside of the contiguous United States and if dealers are permitted to set their own rate or must use a loaded rate.
3. Describe your returned goods program. Provide your returned goods policy.
4. Contractor shall provide Material Safety Data Sheets if applicable, upon request.

TAB 8: NASPO ValuePoint Required Submission Information

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a state's Participating Addendum.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a master agreement, the Statement of Needs and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offeror will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A.

An Offeror must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment A).

1. **Insurance:** To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating State at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 21.
2. **NASPO ValuePoint Administrative Fee and Reporting Requirements:** To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions. In addition to this administrative fee, Participating States may also have an administrative fee that will be addressed in the participating addendums.

The Offeror shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the contract period. Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

3. **NASPO ValuePoint eMarket Center:** To be eligible for award, the Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) to integrate its presence in the NASPO ValuePoint eMarket Center either through an electronic catalog (hosted or punchout site) or unique ordering instructions. Refer to Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

Those terms and conditions require as a minimum that the Offeror agrees to participate in development of ordering instructions. Offeror shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

4. **Lead State Terms and Conditions:** Refer to Attachment C for the Lead State specific Terms and Conditions that will be required.
5. **Participating State Terms and Conditions:** As a courtesy to Offerors, some Participating States' specific Terms and Conditions are provided as Attachments to this solicitation. These are for informational purposes only and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendum. Offeror shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.
6. **Promotion of the NASPO ValuePoint Master Agreement:** The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint cooperative procurement program. In this regard:

- a. Briefly describe how you intend to promote the use of the Master Agreement.

- b. Identify any GSA, state or cooperative purchasing contracts that you hold and the annual sales volume of each contract over the past three years.
 - c. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
 - d. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope of the agreement with respect to any potential order?
 - e. How will your company manage due dates for administrative fee payments and usage reports?
 - f. Through its Cooperative Development Coordinators and Education & Outreach teams, NASPO ValuePoint assists Lead States by engaging vendors in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
7. **Usage Fee and Reporting Plan:** Offeror shall include in their proposal a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include but not be limited to the following components:

- Offeror shall identify the person responsible for providing the mandatory usage reports.
- Offeror shall identify the method and frequency in which usage data will be collected from authorized distributors.
- Offeror shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- Offeror shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

F. PROPOSAL SUBMISSION ADDRESS INSTRUCTIONS:

1. For All Proposals: Offeror must ensure the RFP name and number are clearly visible on the outside the package. See Attachment C.9 for identification of proposal package information.

If a proposal response is not contained in package as described above, the Offeror risks that the package may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other unrequested correspondence or other proposals should be placed in the package.

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

THE COMMONWEALTH SHALL NOT BE RESPONSIBLE IF A PROPOSAL IS NOT DELIVERED BY THE DUE DATE AND TIME.

LATE PROPOSALS WILL NOT BE CONSIDERED.

2. Express Delivery Service: Send the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror is cautioned to not rely on the dependability of Next Day Delivery Service.

3. Hand-Delivered Proposals: Deliver the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for parking, walking to the building, and security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:
 - Present a valid and current picture ID;
 - Pass through metal detectors / security wands; and
 - Permit all bags to be searched by Capital Police or security personnel.

4. U.S. Postal Service: Mail the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for the mailing envelope containing the proposal response to be processed through the Commonwealth’s Mail Security Processing System prior to delivery to Bid Receiving.

VII. EVALUATION CRITERIA

- A. The Sourcing Team will review all proposals received by the proposal submission deadline. Proposals must be complete and responsive to all sections of the RFP. Proposals that do not fulfill all program requirements or omit any of the requested contents may receive a reduced evaluation score. Proposals will be evaluated on the Offerors’ demonstrated ability to meet the expectations of the RFP and provide solutions that will meet or exceed the current and future needs of the Commonwealth of Virginia and the NASPO ValuePoint Participating States. Factors upon which proposals will be evaluated include:

<u>Evaluation Criteria</u>	<u>Point Value</u>
Quality of equipment and service offered and the suitability for the intended purpose stated in this RFP	200
Plans and capability of the Offeror to provide the equipment/service stated in this RFP	200
Experience in providing the equipment/service described herein; names, qualifications, and experience of personnel that will be assigned to handle day-to-day business under the contract. Resumes of personnel are needed.	150
Small Business Subcontracting Plan	200
Pricing	250
TOTAL	1000

Pricing Proposal Evaluation Method (Ratio Calculation): The lowest price shall be scored the maximum number of evaluation points per line item for the price criteria. The lowest price is then divided by each Offeror's proposed price and the result is multiplied by the points assigned for the line item price (25).

The point computation formula for each line item is:

$$\frac{\text{Lowest Pricing Proposal}}{\text{Offeror's Pricing Proposal}} = \% \text{ Factor} \times 25 \text{ points} = \text{Points Value Assigned}$$

The point value total for all line items will not exceed 250 points.

Only complete responses will be considered for award. Although price is an important factor in the award process, because the contract will be made available to all Participating States, all information provided concerning the OEMs ability to comply with the contract requirements will be a significant factor in the award process.

VIII. SCHEDULE OF EVENTS

This is a tentative schedule of events for this solicitation. Times listed are for the Eastern Time Zone:

Solicitation Release	June 28, 2019
Pre-Proposal Conference	July 23, 2019 at 2:00 P.M. EDT
RFP Question Deadline	August 6, 2019 at 5:00 P.M. EDT
Closing Date	August 21, 2019 at 1:00 P.M. EDT
Anticipated Award Date	October 31, 2019

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

IX. PRE-PROPOSAL CONFERENCE

An optional Pre-proposal Conference will be held at 2:00 P.M. on July 23, 2019, at the Patrick Henry Building located at 1111 East Broad Street, Room 1023, Richmond, VA 23219. The purpose of this conference is to allow any potential Offeror 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 proposal, a potential Offeror is encouraged to attend in person or via teleconference. Any changes to the solicitation resulting from this conference will be issued in an amendment that must be signed and included in the Offeror's proposal.

Copies of the RFP will not be provided at the conference; therefore, participants should bring a copy for reference purposes.

Teleconference participants must use the instructions provided below and are advised to start dialing no later than 1:50 P.M. to ensure a telephone connection at the start of the teleconference. There will be no technical assistance available if a connection cannot be made.

1. Dial-in Number 419-768-7116

2. When prompted, enter Conference Code 888903 followed by the # key

An email notification should be sent to Danielle.Keeton@dgs.virginia.gov to indicate whether participation will be in person or via teleconference no later than 12:00 P.M. EDT on July 15, 2019.

Participants must allow ample time for parking, walking to the building and for security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:

- Present a valid and current picture ID;
- Pass through metal detectors / security wands; and
- Permit all bags to be searched by Capital Police or security personnel.

Should any attendees show up or call in after 2:00 PM EDT, information already discussed will not be repeated. It is strongly encouraged that written questions are submitted in advance of the pre-proposal conference no later than 12:00 P.M. EDT on July 15, 2019.

X. REPORTING AND PAYMENT INSTRUCTIONS

Contractor shall submit specific summary and detailed usage reporting requirements as stated in Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions. The reports shall be provided in an electronic format to Participating Entities and/or NASPO ValuePoint during the Contract term or any renewal period at no additional cost.

Contractor agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. In addition to this administrative fee, Participating States may also have an administrative fee that will be addressed in the Participating Addendums.

A. REPORTING INSTRUCTIONS

1. NASPO ValuePoint Usage Reports: Contractor shall be required to provide quarterly summary and detailed usage reports to NASPO ValuePoint. Refer to Attachment A, Section 7 for information on the usage reporting requirements.

B. PAYMENT INSTRUCTIONS

1. NASPO ValuePoint Administrative Fee: Contractor shall pay an administrative fee to NASPO ValuePoint. Refer to Attachment A, Section 6 for information on the administrative fee.

XI. QUOTES AND ORDERS:

1. **Quotes:** Quotes shall show the manufacturer's suggested retail price minus any trade-in allowance, if applicable, contract discount percentage off, delivery and set-up fees, allied pricing and final price for item delivered.
2. **Minimum Order:** For orders of less than \$500.00, the Contractor will be permitted to add the actual transportation cost prepaid and added (PPD&ADD) to invoice for payment or the agency may purchase such products off contract from other sources. Partial shipments of less than minimum order value, which are made at the option of the Contractor, shall be made F.O.B. Destination with no transportation charges added to the invoice. If an Authorized User requested

shipments are below the minimum order value, the Contractor may add actual transportation to invoice for payment.

3. **Authorized Users / Participating Entities may order Products from this Contract by one of the following methods:**
 - a. eVA: All Commonwealth of Virginia Authorized Users shall issue an order through the Commonwealth's eVA eProcurement website portal
 - b. Participating Entity e-Procurement systems: NASPO ValuePoint Participating Entities may issue orders through their own entity-specific e-Procurement system, as specified in any fully executed Participating Addendum
 - c. Purchase Order (PO): An official and duly authorized purchase order form issued by a Participating Entity external to any e-Procurement system.
4. Any Order placed prior to termination or expiration of the Agreement, shall survive such expiration or termination, and the provisions of this Agreement shall continue to have full force and effect for the duration of any Order term.
5. **Order Changes:** Any changes to an Order after submission to the Contractor must be made between the Authorized User and Contractor. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. No Order changes may be made verbally. Only the Authorized User has the right to issue a change to any Order.

XII. INVOICES AND METHODS OF PAYMENT

A. INVOICES:

Contractor shall submit invoice(s) to the address designated on the Order no later than the 10th of the month following acceptance by the Authorized User of goods and services rendered. No invoice may include any cost other than those identified in the Order referencing the Contract. Invoice(s) shall provide at a minimum:

1. Name of the ordering entity
2. Entity point of contact name
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
9. Delivery and set-up fees as separate line items

B. METHODS OF PAYMENT:

Payment will be made within thirty (30) days for Commonwealth of Virginia Agencies and forty-five (45) days for localities of receipt of a valid invoice for all goods and/or services received and accepted. Payment is anticipated to be made by check or EDI.

Participating States may negotiate other payment terms in their Participating Addendums.

XIII. NEGOTIATIONS, CONTRACT AWARD PROCESS AND POST AWARD FORMALIZATION OF THE MASTER AGREEMENT

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. Price shall be considered, but need not be the sole determining factor. Negotiations shall be conducted with the Offerors so selected. After negotiations have been conducted with each offeror so selected, the Commonwealth 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. 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 Commonwealth reserves the sole right during negotiations of any Master Agreements to adjust terms and conditions that would not, in its sole judgment, have a material effect on price, schedule, Statement of Needs, scope of work, or risk to the Commonwealth and Participating Entities, with materiality defined in terms of the effect on the evaluation and award. In any event, the Commonwealth reserves the right to accept changes that are more favorable to its requirements. If no Master Agreement is reached with an Offeror, then the Commonwealth may negotiate with any other Offerors, or make no award under this RFP.

DPS will issue a Notice of Intent to Award (NOIA) electronically in the Commonwealth's eVA system. Any resulting award document from this RFP will be a NASPO ValuePoint Master Agreement that is negotiated between the Commonwealth and selected Offeror(s) incorporating by reference in this RFP, and all requirements and terms and conditions herein, together with an Offeror's proposal, as negotiated.

Any offeror may protest the award of a Master Agreement in accordance with Code of Virginia § 2.2-4360.

Proposal files are public records and will be available for review at the issuing office of the Commonwealth's Division of Purchases and Supply by appointment with the DPS Statewide Sourcing & Contracting Officer named on the cover page of this RFP.

This RFP may be cancelled or proposals rejected at any time prior to any award if the Commonwealth determines that such action is in the collective best interests of the Participating Entities, and it is not required to furnish a statement of the reasons that a particular proposal was not deemed to be the most advantageous (Code of Virginia § 2.2-4359D).

XIV. NASPO VALUEPOINT MASTER AGREEMENT

Any NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum. The Master Agreement will include, but is not limited to, the Commonwealth of Virginia General Terms and Conditions in Attachment B and the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A (which are required to execute a Master Agreement), the Statement of Needs and selected portions of the Offeror's Proposal.

XV. ATTACHMENTS LIST

- A. NASPO ValuePoint Master Agreement Terms and Conditions
- B. Commonwealth of Virginia – Contract General (Mandatory) Terms and Conditions
- C. Commonwealth of Virginia – Contract Special (Desirable) Terms and Conditions
- D. Proprietary Information Identification
- E. Exceptions to RFP
- F. Vendor Data Sheet
- G. State Corporation Commission Form
- H. Small Business Subcontracting Plan
- I. Pricing Schedule
- J. NASPO ValuePoint Intent to Participate State List

ATTACHMENT A



NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement or Master Ordering Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for 2 year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow- on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of

Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org/Account/Login?ReturnUrl=%2F>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in Attachment L.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target

strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years after] award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master

Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

16. Payment

Unless otherwise agreed upon in a Participating Addendum, payment after acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by

law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

20. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the

required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

21. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe

that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

23. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, and other third parties.

25. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal.

The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

26. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Cancellation

Cancellation of this Master Agreement is governed by Attachment C, section 3, Cancellation of Contract.

Any Participating Entity may cancel its participation upon 30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

28. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

29. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 10 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

e. Attachment C, including the Contractual Disputes provision in section 13, shall apply only to Participating and Purchasing Entities in the Commonwealth of Virginia unless those provisions are incorporated by reference into a Participating Addenda or Orders by other entities.

30. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third- party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to

vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

33. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

34. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

35. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

36. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

ATTACHMENT B

COMMONWEALTH OF VIRGINIA GENERAL TERMS AND CONDITIONS

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

- A. **VENDORS MANUAL**: This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the "I Sell to Virginia" tab.
- B. **APPLICABLE LAWS AND COURTS**: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, 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 the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION**: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

- e. 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 contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING**: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS**: By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- 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.
- G. **ANTITRUST**: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs**: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS**: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT**:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or 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 awarded a contract under this solicitation 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 contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF*

TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the

procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this proposal, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make, or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the proposal. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the Proposal will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Proposal nonresponsive. Unless the offeror clearly indicates in its Proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the proposal.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their Proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **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 the Contractor and any subcontractors will maintain these insurance coverage during the entire term of the Participating Addendum and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the Participating Addendum shall be in noncompliance with the Participating Addendum.
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.

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

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **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 bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

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

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

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 solicitation/contract 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.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency 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 agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- AA. **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.

ATTACHMENT C

COMMONWEALTH OF VIRGINIA SPECIAL TERMS AND CONDITIONS

The following terms and conditions may be included in any Participating Addendum between the Commonwealth of Virginia and a Contractor for any resulting contract. Other Participating Entities may have their own provisions.

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
2. **AUDIT OF PRICING AND MANUFACTURER AND/OR COMMODITY DISCOUNTS:** Contractor may be requested to obtain a certified audit, at any time for the contract duration, to verify Contractor pricing is same as the market basket prices and also to verify to the Commonwealth that category discounts and manufacturer discounts are in compliance with the contract terms.
3. **BREACH:** The Contractor shall be deemed in breach of this Agreement if the Contractor:
 - a. Fails to deliver any Product or Service by the specified delivery date;
 - b. Repeatedly fails to respond to requests for required service within the time limits set forth in this Agreement;
 - c. Fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or
 - d. Fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was from causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

4. **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 also be terminated by the contractor, 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.
5. **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.

6. **CONTRACTUAL DISPUTES:** In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether from money or other relief, shall be submitted in writing to the Authorized User 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 Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. 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.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia 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 Section 2.2-4364, Code of Virginia, or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

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.

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' remedies include the right to terminate any Services hereunder.

For any Order issued by an Authorized User, the User is responsible to fully and independently administer any Services provided under the Agreement to include contractual disputes, and invoicing and payments, without direct administration from DGS. Neither the Commonwealth nor DGS shall be held liable for any costs or damages by any other User as a result of any authorization by the Contractor to use the Agreement.

By entering into this Agreement, the Contractor hereby certifies and warrants that neither the Commonwealth nor DGS shall be held responsible or accountable for any acts or omissions of any Authorized User, and shall not be considered in default of this Agreement, no matter the circumstances. The use of the Agreement does not preclude any participating Authorized User from using other agreements or competitive processes as their needs may require

7. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple 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. Contractors should email Catalog or Index Page information to eVA- catalo g-manager@dgs.virginia.gov.

8. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to

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

- 11. PRICE ESCALATION/DE-ESCALATION:** The Commonwealth recognizes that current price list contracts are subject to adjustments at different times during the year; therefore, there will be no pre-determined price adjustment time period for the contract.

The percentage discount may be increased but shall not be decreased throughout the term of the contract, to include all renewals, and shall apply to any new equipment, which may be introduced and added to the manufacturer's product line. Public bodies will apply the discount to the current price list contract that has been incorporated as part of the Contract by the Purchasing Officer, at the time the order is placed. However, should the price decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. Price increases after placement of order will not be accepted.

Contractor shall give not less than 60 days advance notice of any price increases to the Contracting Officer. Price adjustments should not exceed by more than the **Commercial Turf and Grounds Care Equipment Manufacturing** category of Table 9 of the PPI section of the Producer Price Index of the United States Bureau of Labor Statistics. Any approved price changes will be effective only when approved by the Contract Officer at the beginning of the calendar month following the end of the full 60-day notification period or approval date. 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 verify that the requested price increase is general in scope and not applicable just to NASPO ValuePoint Master agreements.

The Contracting Officer will notify 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, be required to be communicated immediately to the Contracting Officer.

Note: Consumers Price Indices, Producers Price Indices or other appropriate indices will be used as a guide to determine price increases or decreases. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

- 12. PROPOSAL ACCEPTANCE PERIOD:** Any Proposal received in response to this RFP shall be valid for ninety (90) days. At the end of the ninety (90) days, the Proposal may be withdrawn at the written request of the offeror. If the Proposal is not withdrawn at that time, it remains in effect until an award is made or the RFP is canceled.
- 13. PRIME CONTRACTOR RESPONSIBILITIES:** Contractor shall be responsible for completely supervising and directing the work under the 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. 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.

14. TERM AND RENEWAL OF CONTRACT: The initial contract term will be for a period of three (3) years from the date of award. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completed.

This contract contains two (2) successive two year renewal periods, and at a reasonable time (approximately four to six months) prior to the expiration, the decision as to whether to renew will be made by the Contracting Officer.

15. REPORTS AND FEES FOR SALES IN THE COMMONWEALTH OF VIRGINIA:

A. CONTRACTOR'S QUARTERLY REPORT OF SALES: Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. See attachment to this solicitation for the report template which identifies the information to be provided. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit information in the required format and time may result in cancellation of the awarded contract.

B. SURCHARGE ADJUSTMENT FEE (SCA): contractor must 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: SCA
 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. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of this contract.

C. SCHEDULE:

<u>Sales Report Period</u>	<u>Sales Months</u>	<u>Quarterly Report Due</u>
1st Quarter	Jan, Feb, Mar	April 15th
2nd Quarter	Apr, May, June	July 15th
3rd Quarter	July, Aug, Sept	October 15th
4th Quarter	Oct, Nov, Dec	January 15th
<u>SCA Fee Period</u>	<u>Sales Months</u>	<u>Quarterly 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

D. **EVA VENDOR TRANSACTION FEE:** Contractor shall pay the vendor transaction fee for each order issued through the Commonwealth's e-procurement website "eVA". Vendor transaction fees are determined by the date the original purchase order is issued and the current fee schedule. Refer to Attachment B Item X entitled "eVA Business-To-Government Vendor Registration, Contracts, and Orders" for more information on eVA fees.

16. SPECIAL EDUCATION OR PROMOTIONAL DISCOUNTS: The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of this Contract. Such notice should also advise the duration of the specific sale or discount price.

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

18. SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING :

A. Submission of Small Business Subcontracting Plan: It is the statewide goal of the Commonwealth that 42% of its purchases be made from small businesses certified by DSBSD. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. 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 and businesses with DSBSD service disabled veteran-owned status when they have also received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the offeror shall note such on the Small Business Subcontracting Plan. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.

B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. Prime Contractor Subcontractor Reporting:

1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are DSBSD-certified businesses or Employment Services Organizations (ESOs). The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women owned, minority-owned, businesses with DSBSD Service Disabled Veteran-owned status, or Employment Services Organization) and type of product/service provided, at the frequency required.

2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DSBSD-certified

businesses or Employment Services Organizations. 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/service provided, at the frequency required.

ATTACHMENT D

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

PROPRIETARY INFORMATION IDENTIFICATION

Name of Firm/Offeror: _____

Trade secrets or proprietary material submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Code of Virginia § 2.2-4342F, in writing, either before or at the time the data or other material is submitted. The trade secret or proprietary material submitted in the proposal must be identified by some distinct method such as highlighting or underlining, and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary material. Offeror shall complete and provide the "Proprietary Information Identification" form with a summary of this material in their Proposal response which must specifically identify the data or materials to be protected including the section and page numbers of the proposal in which it is contained, and state the reasons protection is necessary. **The classification of an entire Proposal document, line item prices, and/or total Proposal prices as trade secret or proprietary is not acceptable and the Proposal may be rejected.**

SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT F

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

VENDOR DATA SHEET

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

1. Qualification: The vendor must have the capability and capacity in all respects to fully satisfy all contractual requirements.
2. Vendor's Primary Contact:
Name (Print): _____ Phone: _____
3. Years in Business: Indicate the length of time you have been in business providing this type of goods or services:
_____ Years _____ Months
4. Vendor Information: eVA Vendor ID or DUNS Number: _____
5. Provide information of at least three (3) current or recent accounts, either commercial or governmental, that your business has provided similar goods and/or services.

A. Company: _____ Contact: _____
 Phone:(_____) _____ Fax: (_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

B. Company: _____ Contact: _____
 Phone:(_____) _____ Fax: (_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

C. Company: _____ Contact: _____
 Phone:(_____) _____ Fax:(_____) _____
 Project: _____
 Dates of Service: _____ \$ Value: _____

I certify the accuracy of this information:

Signed: _____
 Title: _____ Date: _____

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT G

COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

VIRGINIA STATE CORPORATION COMMISSION FORM

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

The undersigned Offeror:

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

-OR-

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

-OR-

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

-OR-

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

**** NOTE ****

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

Signature: _____

Name: _____
(Print)

Title: _____

Name of Firm: _____

Date: _____

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

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT H
COMMONWEALTH OF VIRGINIA
GROUNDS MAINTENANCE EQUIPMENT
RFP# 377

Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential offerors are required to return this document with their response.

Small Business "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small businesses for the initial contract period in Section B

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD-certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

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

Certification number: _____ Certification Date: _____

