

## SOLICITATION NARRATIVE

- I. **PURPOSE:** The purpose and intent of this Invitation for Bids is to solicit sealed bids to establish a contract on a per region basis with one or more firms to provide for the receipt, storage, and delivery of USDA donated foods to Virginia schools, institutions, and other agencies, (hereinafter referred to as agencies) for the Department of Agriculture and Consumer Services (VDACS), an agency of the Commonwealth of Virginia.

II. **SCOPE OF WORK:**

- A. **GENERAL REQUIREMENTS:** The Contractor shall furnish all storage facilities, inventory and delivery data processing equipment, transportation, materials, handling equipment, and labor to receive, store, distribute, and track USDA donated foods within the following regions of the state. Contractor is also required to access the USDA Electronic Commodity Ordering System (ECOS), which requires a computer system with e-mail and Internet access (the ECOS web site is <https://www.ecos.usda.gov>).

1. The state is divided into seven (7) regions; however, this Invitation for Bids is for the following regions: Tidewater (Region I); Richmond Area (Region II); Northern Virginia (Region III); Shenandoah Valley (Region IV); Roanoke Valley (Region V); Southside Virginia (Region VI). (See attached state map in **Appendix D**)
2. Although the state is divided into seven (7) regions, the Contractor is reminded that some regions do not contain every school division within their boundaries. Please refer to **Appendix C** for specific school divisions. Although a school division may be excluded in a region, the boundaries of that school division may contain private schools or institutions to be serviced.

- B. **GOODS:** Recipient agencies in the state are potentially eligible to receive about 80 items of packaged USDA foods. Approximately 65 items were shipped into Virginia during the **2005/2006** school year. **Appendix A** indicates total case counts for these items, categorized according to warehouse requirements as:

---	Dry groceries		. . . . .	34
---	Refrigerated foods	- frozen	. . . . .	27
		- chilled	. . . . .	.4

In addition to the USDA items listed, approximately 200 different further-processed products are received from commercial food processors. (For example, they manufacture chicken nuggets from whole chickens.) These items are primarily frozen items and quantities vary from year to year.

**The Contractor agrees to accept all items ordered by VDACS, both from USDA vendors and from further processors.**

C. **INBOUND FREIGHT:**

1. **Method of Arrival:** Currently, USDA shipments into the state are by either tractor trailer or container.
2. **Prepaid Shipments:** All donated foods shipped into a Contractor's warehouse will be totally prepaid; i.e., product and freight. The VDACS office will notify Contractors of expected shipping periods of USDA foods. Shippers will notify Contractors of dates of shipments. Truckers will be required to prearrange unloading appointments directly with

the Contractor. Manufacturers of further processed items will also prearrange an unloading appointment.

3. Incoming Shipments: Frequency and volume of incoming shipments will vary from one region to another. **See Appendix A.**

Contractors shall receive inbound freight in accordance with USDA/FNS (FD) Instruction 709-5, Shipment and Receipt of Foods, (copy on file in the Richmond Food Distribution Office) and shall be responsible for the following:

- a. Receiving shipments Monday through Friday during normal business hours of at least 8 hours per day.
- b. Approximately 90% or more of all incoming shipments will be palletized. However, Contractors must provide all labor and equipment for unloading including the few non-palletized loads. Over-the-road truck drivers (not drivers delivering piggyback trailers) may be requested to assist with unloading non-palletized loads by palletizing or placing units on the tailgate. Drivers are not required to re-palletize loads to meet Contractor's individual storage requirements such as pallet size, height, type of tie, etc.
- c. Contractors shall unload trucks on the day of arrival when the shipper or trucker made an appointment at least 24 hours in advance. When no advance appointment was made, Contractor must attempt to unload trucks within 24 hours of arrival. **In all cases, trucks must be unloaded within 48 hours of arrival unless specifically exempted by VDACS.**
- d. Positively identify incoming shipments using the Notice to Deliver or Bill of Lading matched against the ECOS Requisition by Pcims Report (consignee report) and only unload trailers or portions of trailers so identified. **Contractors must call VDACS for assistance prior to unloading if positive identification is not possible.**
- e. Inspect each load for condition upon arrival and immediately notify VDACS (phone 804-786-3936) of any problems with condition/quality or quantity. **Contractor shall not refuse a shipment without VDACS approval.** Verify accuracy of count. Notify carrier's agent of any overages, shortages, or damages before releasing the delivery vehicle. Maintain written record of carrier notification and execute Over, Short, and Damaged Report (OS&D) as may be required.
- f. Notify agencies within contract region of shipment arrival at least weekly and promptly forward all receiving reports, OS&D reports, and other documents to VDACS, Food Distribution Program, P.O. Box 1163, Richmond, VA 23218.
- g. Clean and repackage, as required, any damaged merchandise so that all foods suitable for human consumption are salvaged for program use.
- h. Pay for all freight storage, demurrage and detention charges that occur due to unloading delays, unless specifically exempted by VDACS.
- i. Brace or level stop-off shipments for transport to other destinations.
- j. **Contractor shall be liable for claims levied by USDA against Contractor or VDACS as a result of Contractor's failure to properly secure, handle, or account for shipments.**

D. **WAREHOUSING/STORAGE:**

1. **Storage Facilities:** Storage facilities must be constructed and operated to provide secure and sanitary storage at all times. Temperature and conditions must be as recommended by the Refrigeration Research Foundation. Foods must be stored off the floor and away from walls to allow for air circulation.

The Contractor must have adequate warehouse facilities for the following:

---Dry Groceries -regular care: Ventilated space.

-special care: Maintain temperature at 70° F or less year round. Grain products will require refrigeration storage during summer months where dry warehouse temperatures continuously exceed 70° F.

---Frozen foods -maintained at 0° F or below.

---Chilled items -normally 36° F (32° F to 41° F, depending on the item)

Freezers must be equipped with some type of monitoring/alarm device that will alert the contractor to equipment failure or malfunction, or, records must be kept which document that required holding temperatures are being maintained in the freezers and coolers. Such records shall be available for inspection by VDACS

**The total amount of warehouse space required will vary from one region to another as well as from month to month. The heaviest USDA shipping periods are mid August-October and January-February.**

2. **Stock Rotation:** Contractor must stock and space foods in a manner so that USDA Donated Foods are readily identified. For USDA Donated Foods not bearing the USDA label and legend "Not to be sold or exchanged", Contractor must use a method of identification, i.e. placard, stamp, bar code, etc., as well as slotting records, that sufficiently identify those cases as USDA. Evidence of stock rotation must be provided upon request.
3. **Sanitation:** Contractor shall allow warehouses to be routinely inspected by the VDACS Food Inspection Section, or if the Contractor is located in another state, the warehouse will be inspected by the comparable state agency. Warehouse facilities and warehousing practices must be continuously in compliance with the United States Food, Drug, and Cosmetic Act. Warehouses must also be in compliance with Virginia Food Laws or comparable state food laws if the warehouse is outside of Virginia.

E. **TRANSPORTATION:** Contractor must own or lease (or submit an acceptable plan for possession of) adequate delivery vehicles at the time the contract is awarded as follows:

1. Van trucks for delivery of dry groceries and refrigerated trucks for delivery of refrigerated items; or
2. Dual compartment trucks for combination deliveries of dry groceries and refrigerated items (0° F); or
3. Single compartment refrigerated trucks (0° F) for separate or integrated deliveries of dry groceries and refrigerated items.

**Delivery temperature of frozen and chilled foods shall be in accordance with the Association of Food and Drug Officials' (AFDO) Model Food Code as recommended by the Food and Drug Administration (Federal).**

Contractor must utilize separate trucks, compartments, or protective equipment necessary to maintain proper temperatures on all items including keeping temperature sensitive products from

becoming too cold or too hot. The number of vehicles required will depend on the size of the trucks and will vary from one region to another.

- F. **NOTIFICATION OF SHIPMENT ARRIVALS:** Contractor must notify schools and institutions within Contractor's region of shipments received during each week by mailing, faxing or e-mailing a weekly notice to each recipient agency. Each agency's notice must include Contractor's name, the agency name, and the data shown below for each shipment in which the agency is included:

1. Food Item
2. Delivery Order Number or foods identified as processed items
3. Number of cases for the Agency
4. Date Received
5. Storage Expiration Date

Contractor must mail a weekly master listing to VDACS that differs from agency notices only in listing the total units received for each shipment. Contractor must issue notices on Friday of each week listing shipments that arrived Monday through Friday of that week (or arrived Friday of the preceding week through Thursday of that week). If Contractor fails to issue notices as outlined above, the Date Received and Storage Expiration Date must be moved forward to the week in which notice is issued. Contractor must establish an internal check system to ensure that notices for each shipment received have been issued. This system must be approved by VDACS and operational by July 1, 2007.

- G. **OUTBOUND DELIVERIES:**

1. **Prior Notification:** Contractor will receive orders from school divisions and other recipient agencies for outbound shipments at least 48 business hours prior to scheduled delivery dates. Orders will designate number of cases of items to be delivered to each school or other recipient agency.
2. **Delivery Schedules:** Deliveries shall be made weekly or every other week at the option of the agencies in accordance with the fees as stated in the bid. All individual schools within a public school district will be required by VDACS to have the same frequency of delivery. Private schools and institutions will not have the option of every week delivery unless the public school district in which they are located also selects this option.

Delivery schedules must be submitted, by the Contractor, to agencies within each region no later than ninety (90) days after award of the contract, and Contractor must adhere to such schedule. Changes will be made only upon consent of agencies in the case of a temporary change. For permanent changes, Contractor must submit another delivery schedule to agencies at least two (2) weeks prior to the proposed long-term delivery change.

3. **Hours of Service:** Deliveries shall be made to agencies between the hours of 7 a.m. and 3 p.m. unless special arrangements are made in advance. Deliveries shall be made Monday through Friday except school holidays or other times when schools are closed such as for inclement weather. Deliveries missed due to holidays, inclement weather, breakdowns, etc., must be rescheduled before the next scheduled delivery.
4. **Placement of Commodities:** Drivers and/or helpers must deliver merchandise into designated receiving areas at each agency. Drivers or helpers will not be required to stow merchandise on shelves or in freezers or refrigerators. However, drivers and/or helpers should cooperate with schools by rolling stock into walk-in freezers/coolers and stock rooms provided such rooms are in accessible condition.

Drivers and helpers must request authorized agency receiver or the designated representative to verify accuracy of items, quantities of each item, total quantities, and condition of merchandise. **Each delivery ticket must be signed by a designated agency**

**receiver.** Variations from the norm, i.e. shortages, damages, etc., must be noted on each ticket by the designated agency receiver. A copy of each delivery ticket must be left at the agency.

5. Mixed Loads: Contractor may deliver donated foods in straight loads containing USDA donated foods only, or in mixed loads with commercially purchased foods, as long as other terms of the contract are satisfied. Foods must not be stored or delivered with chemicals or other products that may be harmful to the quality or safety of the foods.
6. Special Deliveries: Special or intermediate deliveries are not required under terms of this contract.
7. Delivery Errors: In those instances where Contractor fails to deliver items in stock which were properly ordered by an agency, Contractor must deliver those items within 24 hours of originally scheduled delivery at no additional charge if so requested by the agency.
8. Agency Pick-ups: Some recipient agencies may choose to pick up their food directly from the Contractor's warehouse and VDACS may transfer foods to other warehouses from time to time. The price quoted for direct pickups must apply to these recipient agencies and VDACS. A recipient agency selecting this option will be required to pick up all foods, and no deliveries will be necessary to that agency for the period of the contract. Agencies selecting this option must indicate their desire to do so at the beginning of the contract year and cannot change their option for the remainder of the contract period.
9. Summer Camps: Contractor shall make a one-time delivery to VDACS approved Summer Camps during June of each year. Foods for camps are normally received in March and April and may be stored for VDACS until allocated to the camps. Except for delivery frequency, all other terms and conditions of this contract are applicable. Camps will be charged the every other week delivery fee.

#### H. **REPORTS/INVENTORY:**

1. Requisition by Pcims Report (consignee's report): Contractor shall electronically sign a "Received Shipment" report on ECOS for each incoming shipment. Upon unloading, Contractor must promptly submit a Bill of Lading for each incoming shipment received. Over, Short, and Damage Reports (OS&D) must also be completed and submitted when discrepancies in case counts are found or when damage is involved.
2. Inventory Controls: Inventory reports must be submitted monthly to VDACS and to school systems. Inventory reports for school systems may be submitted less frequently than monthly if mutually agreed upon by the school system and VDACS. Inventory reports must convey the following information by item and delivery order number:
  - a. Quantity on hand at beginning of monthly period.
  - b. Receipts during month.
  - c. Deliveries during month (listed by agency). Only receipted (signed for) deliveries will be considered as delivered; all other merchandise will be considered as in inventory.
  - d. Quantity on hand at end of monthly period.

#### I. **WAREHOUSE OVERAGES AND SHORTAGES:** The Contractor shall be financially responsible for shortages and damages to products, or packages, that make them unacceptable to recipients. Damage shall include infestation of product due to improper storage conditions, as well as physical damage to containers including serious rust.

Contractor's settlements shall be made in the form of cash payments equivalent to VDACS' current full value or by replacement with an equal quantity of equal quality product, at the option of VDACS officials. Known shortages and losses due to damages shall be settled at the time of the occurrence.

Should overage and shortage discrepancies between physical inventory and book inventory exist, such discrepancies must be reconciled. Irreconcilable overages and shortages will be settled by computing the full value of such shortages and overages (as well as fees paid for further processed items). If the value of shortages exceeds the value of overages, a monetary settlement with VDACS shall be required for the difference in value. If the value of overages exceeds the value of shortages, no monetary settlement is required. Book inventory will be adjusted after settlement to correspond with the physical inventory.

### III. **GENERAL TERMS AND CONDITIONS:**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes and 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 Office of Procurement and is accessible on the Internet at [www.dgs.virginia.gov/dps](http://www.dgs.virginia.gov/dps) under "Manuals".
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Agency and the Contractor are encourage to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia* § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders 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. 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, or disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements, and solicitations placed in accordance with federal law,

rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, 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 submitting their bids, bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:**  
Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the Bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revision 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 to be made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A Contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

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

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



- L. **QUALIFICATIONS OF BIDDERS:** VDACS may make such reasonable investigations as deemed proper and necessary, to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder 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:** VDACS 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 VDACS.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any 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 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. 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:
    - i. By mutual agreement between the parties in writing; or
    - ii. 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
    - iii. 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's *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. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

- R. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- S. Employer's Liability - \$100,000.
- T. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- U. Automobile Liability- \$1,000,000 – per occurrence.
- V. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000 as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- W. **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; (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.

- X. **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/her objection, access to equivalent goods, service, or disbursements from an alternative provider.
- Y. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA internet electronic procurement solution, web site portal [www.eva.virginia.gov](http://www.eva.virginia.gov) streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct

business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. **All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.**

1. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
2. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
3. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - i. DMBE-certified small businesses: 1% capped at \$500 per order
  - ii. Businesses that are not DMBE-certified small businesses: 1% capped at \$1500 per order.

Z. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

#### IV. **SPECIAL TERMS AND CONDITIONS**

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to VDACS will be used in product literature or advertising without the express agreement and approval of VDACS. The Contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **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. VDACS, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD:** The awards will be made to the lowest responsive and responsible bidders per region, as determined by the Bid Evaluation procedure explained herein. Due consideration will be given to price, previous experience, storage facilities, and the ability of the Bidder to provide the required services. VDACS reserves the right to conduct any test, including site inspections, it may deem advisable and to make all evaluations. VDACS also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- D. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is cancelled.
- E. **CANCELLATION OF CONTRACT:** VDACS reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- F. **LATE BIDS:** To be considered for selection bids must be received by the Office of Procurement by the designated date and hour. The official time used in the receipt of bids is that time on the automatic time stamp machine in the Office of Procurement. Bids received in the Office of Procurement after the date and hour designated are automatically disqualified and will not be considered. **VDACS is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra- mail system. It is the sole responsibility of the bidder to insure that its bid reaches the Office of Procurement by the designated date and hour.** Bid receipts and openings or the receipt of bids scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regular business day.
- G. **CONTRACT RENEWAL:** This contract may be renewed by the agency for a period of four (4) successive one-year periods under the terms and conditions of the original contract as stated in #1, #2, #3, and #4 below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 120 days prior to the expiration date of each contract period.
1. If the Commonwealth and the Contractor agree to exercise the option to renew the contract for an additional one-year period, the contract prices for the additional one year shall not exceed the contract prices of the original contract increased or decreased by no more than the percentage of increase or decrease of the CPI-W, other services, section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which such statistics are available.
  2. If during the first one-year renewal period, the Commonwealth and the Contractor elect to exercise the option to renew the contract for the second additional one-year period, the contract prices for the second additional one year period shall not exceed the contract prices for the first one-year renewal period increased or decreased by no more than the percentage of increase or decrease of the CPI-W, other services, section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which such statistics are available.
  3. If during the second one-year renewal period, the Commonwealth and the Contractor elect to exercise the option to renew the contract for the third additional one-year period, the contract prices for the third additional one year period shall not exceed the contract prices for the second one-year renewal period increased or decreased by no more than the percentage of increase or decrease of the CPI-W, other services, section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which such statistics are available.
  4. If during the third one-year renewal period, the Commonwealth and the Contractor elect to exercise the option to renew the contract for the fourth additional one-year period, the contract prices for the fourth additional one year period shall not exceed the contract prices for the third one-year renewal period increased or decreased by no more than the percentage of increase or decrease of the CPI-W, other services, section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which such statistics are available.
- H. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he/she may utilize, using their best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he/she is as fully responsible for the acts and omissions of their subcontractors and of persons employed by them as he/she is for the acts and omissions of their own employees.
- I. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of VDACS. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish VDACS the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

J. **BIDDER UNDERSTANDING OF REQUIREMENTS:** Your signature on your bid certifies that you have inspected the job site, are aware of the conditions under which the work must be accomplished and that you fully understand this solicitation. It is the responsibility of each Bidder to inquire about and clarify any requirements of this solicitation that are not understood. Failure to understand the requirements of this solicitation will not relieve the Contractor of any responsibilities under any contract. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth. VDACS will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible buyer in the Office of Procurement. Bidders must ensure that written inquiries reach the buyer at least five (5) days prior to the time set for receipt of bids. A copy of all inquiries and the respective response may be provided in the form of an addendum. These questions may be sent by email to Kathy.bosdell@vdacs.virginia.gov.

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

_____	<u>February 14, 2007</u>	<u>2:00 P.M. EST</u>
Name of Bidder	Due Date	Time
_____		<u>301-07-005</u>
Street Address		IFB Number
_____		
City, State, Zip Code		

IFB Title: Storage and Distribution of USDA Donated Foods

Attention: Katherine Bosdell, CPPB, VCO, Senior Contract Specialist

The envelope should be addressed as directed on page 1 of the solicitation.

If a bid not contained in the special envelope is mailed, the Bidder takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid to be disqualified. Bids may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids should be placed in the envelope.

L. **PERFORMANCE AND PAYMENTS BONDS:** The successful Bidder shall deliver to the VDACS Purchasing Office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds in the amount of \$100,000 each, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. Such companies shall also be approved by the United States Department of the Treasury as acceptable sureties on Federal bonds. No payment shall be due and payable to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the Purchasing Office. Standard bond forms will be provided by the Purchasing Office prior to or at the time of the award.

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

N. **CONTRACTOR LICENSE REQUIREMENT:** By submitting their bids, Bidders certify that their firm/person is properly licensed for providing the goods/services specified.

O. **ADDITIONS OR DELETIONS TO REGIONS:** School districts or other recipient agencies may be moved between regions with mutual consent of Contractor and VDACS. The right is reserved to delete and/or add localities to this program during the term of the contract, upon

mutual consent of VDACS and the Contractor. Contractor also agrees to service any new agencies within the contract area that may be approved to receive donated foods.

- P. **FUEL ADJUSTMENT ALLOWANCE:** Fuel prices may fluctuate significantly during the contract period. VDACS will review Full Service Diesel Fuel Cash Prices as compiled by the Energy Information Administration as of November 30 of each year. The average price for the 12 month period ending November 30 will be compared with the average price for the same 12 month period one year earlier. For each full \$.08 increase per gallon in the average annual price over the average annual price for the period one year earlier, the fee per case for delivery of USDA donated foods will be increased by \$.01 effective January 1 of the following year for the remainder of the contract. For each full \$.08 decrease per gallon, the fee per case for delivery of USDA donated foods will be decreased by \$.01.

The adjustments described under Section O were developed utilizing the following data:

Average round trip mileage per delivery truck = 300 miles  
Average number of cases delivered per trip = 400 cases  
Average fuel consumption = 6 miles per gallon  
\$.08 fuel cost charge divided by 6 MPG = \$.0133 increase per mile  
\$.0133 X 300 miles = \$3.99 increased cost per trip  
\$3.99 divided by 400 cases = \$.01 increased cost per case

- Q. **SMALL, WOMEN-OWNED AND MINORITY BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such business to small businesses, women-owned, and minority businesses. Names of firms may be available from the buyer and/or from the Division of Purchases and Supply. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the Purchasing Office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

- V. **METHOD OF PAYMENT:** Contractor shall submit an invoice for items delivered to and accepted by recipient agencies on a monthly basis or on other mutually agreed upon intervals. Invoices shall be submitted to the address for the agencies to which items are delivered or to a central billing office in the case of public school divisions desiring this billing method. Each invoice shall include a summary of delivery or pickup tickets for the period. Each referenced ticket shall be listed in numerical sequence and show the total number of cases, bags, etc. delivered. Charges for pickup by agencies shall be listed separately on invoices. There is no minimum quantity of foods required per stop; however, Contractors may bill recipient agencies a minimum fee equivalent to the delivery for twenty (20) cases in instances where fewer than twenty (20) cases are delivered per stop. Contractor shall count cases of commodities and purchased foods delivered per stop in determining application of this minimum billing.

If a Contractor charges for storage beyond the initial two-month storage period, such charges shall be stated on the monthly statement as incurred. End of the year or other lump sum billings shall not be allowed. (See Section VI.4) Such charges shall reference the item(s) for which charges are assessed by item name, VDACS delivery order number, and date of receipt.

In the event an agency falls more than 60 days in arrears in payments, VDACS officials and Contractor may jointly agree to suspend deliveries

If state and federal funds are available to pay a portion of the Contractor's fees for specified recipient agencies, Contractor agrees upon notification by VDACS to bill and accept payment from VDACS of a standard amount per case (or agency) as determined by VDACS. After notification from VDACS, Contractor shall submit vendor's invoice directly to VDACS with the specified supporting documentation for payment. Any remaining differences in the usual fee must be billed by the Contractor to the specified recipient agencies.

## VI. **PRICING SCHEDULE INSTRUCTIONS:**

**PRICING CRITERIA:** Bid prices shall be quoted on **Pages 3 & 4** on a per-case basis for each element. Unit price per case shall apply uniformly to dry, chilled, and frozen foods. Unit prices shall include charges for receipt, handling, distribution, and first two month's storage of food. Unit prices stated shall be all inclusive, and no other charges shall be allowed.

**Pricing Explanation:**

1. **Weekly delivery** - Unit price per case for agencies that request delivery once every seven days.
2. **Every other week delivery** - Unit price per case for agencies that request delivery once every fourteen days.
3. **Pickups by recipient agencies** - Unit price per case to be assessed recipient agencies that pick up items from the Contractor's warehouse.
4. **Charges for storage beyond two months** - Contractors may assess a charge per unit per month for each unit of food remaining in storage beyond two months for the convenience of recipient agencies or VDACS. Indicate unit price per case. Such charges may be assessed for a full month on the first day following the end of the first two months storage and for each succeeding month's storage period. Contractor may double the storage fee per unit per month for food remaining in storage beyond 6 months.
5. **Net off Invoice option**-Upon approval from VDACS, Contractor may offer net-off-invoice on a limited number of further processed items. Documentation of USDA credit to schools, and all related reports, must have prior approval from VDACS.

**VII. BID EVALUATION PROCEDURE:** The bids will be evaluated on a unit price per region basis. Each of the four pricing elements within each region will be assigned the weight factors listed below which will be multiplied times the bid unit price and then the results added together to determine the lowest bid within each region.

**IMPORTANT NOTE:** Bid prices shall be whole dollars and cents, not fractions of cents. Bid price digits following the hundredth place will be ignored and the bid price will not be rounded up or down. For example: \$1.66 is acceptable, however, in a bid price of \$1.663 the third number after the decimal point will be ignored.

Bid evaluation tabulation of all qualified bids will be based on whole dollars and cents, not on fractions of cents. Using the example below, on the "Pick Up By Agency" line, a unit price of .92 would be multiplied by 5% equaling 0.046. VDACS will round the price up to 0.05. If the last number is 1,2,3, or 4, VDACS will round down. If the last number is 5,6,7,8, or 9, VDACS will round up.

**NOTE: BIDDERS ARE NOT TO FILL IN THESE BLANKS. THIS EXAMPLE IS ONLY INTENDED TO SHOW THE PROCEDURE TO BE USED:**

Weekly Delivery:	unit price	\$ _____	X 15% = \$ _____
Every Other Week:	unit price	\$ _____	X 65% = \$ _____
Pick Up By Agency:	unit price	\$ _____	X 5% = \$ _____
Reoccurring Storage:	unit price	\$ _____	X 15% = \$ _____
		GRAND TOTAL	\$ _____

