

**CONTRACT E194-77127-MA2668
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
ENERWISE GLOBAL TECHNOLOGIES D/B/A CPOWER**

1. SCOPE OF CONTRACT

This is a Master Contract (“Master Contract” or “Contract” or “Agreement”) between the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply (“Commonwealth” or “DGS” or “DPS”) on behalf of the Department of Mines, Minerals, and Energy (or “DMME”) and **ENERWISE GLOBAL TECHNOLOGIES D/B/A CPOWER** (“Contractor” or “CPower”), a **Maryland** corporation having its principal place of business at **111 Market Place, Suite 201, Baltimore, Maryland, 21202**, for provision of designated categories of **Curtailment Service Provider / Demand Response Services** in ATTACHMENT A, PRODUCT and PRICING SCHEDULE; pursuant to this document dated October 20, 2017, any addendums, and the negotiated provisions herein. The Contract shall be effective as of February 2, 2018, with an initial period to run for three (3) years, going through February 1, 2021, with three (3) one-year optional renewal provisions.

Contractor shall provide **Curtailment Service Provider / Demand Response Services** in accordance with the provisions of this Agreement upon the receipt of a duly authorized order, as defined herein, from any Commonwealth state agency, law enforcement agency, educational institution, or any other public body, as defined in § 2.2-4301 entitled “Definitions” and § 2.2-4304 of the Virginia Public Procurement Act (VPPA), as amended. The Agreement is also available for use by certain charitable corporations and private nonprofit 501(c) (3) institutions of higher education, chartered in Virginia, and as allowable pursuant to Virginia Code 2.2-1120. Collectively, all aforementioned parties are referred to hereinafter in the aggregate as “Authorized Users.”

To ensure maximum transparency and public access to the Commonwealth's procurement opportunities, and consistent with Code § 2.2-1110, the Commonwealth's Authorized Users shall submit orders directly with Contractor through the Commonwealth's central electronic procurement website, as delineated with all ordering instructions herein.

2. INTERPRETATION OF CONTRACT

The documents comprising this Contract, and their order of precedence in case of conflict, are: (a) this Contract, consisting of terms and conditions herein, including all attachments hereto (b) The original Request for Proposals (RFP) E194-20029 dated April 13, 2017, (c) any addendums, (d) clarification questions and answers, (e) any negotiated items, and (f) **CPower's** response to the RFP dated June 13, 2017. The foregoing documents represent the complete and final Contract of the parties with respect to the subject matter of this Contract.

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

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

Neither the Commonwealth nor any Authorized User Ordering Systems, Products or Services under this Agreement shall be required to sign or execute any other additional contract, license or other agreement, including shrink-wrap or click-wrap agreements, which contain contractual terms and conditions separate from this Contract, unless specifically

stipulated within the contract terms. Any documents signed by persons other than the Director, DGS/DPS, or their duly authorized designee, shall have no validity and the Contract terms and conditions herein shall supersede all such agreements.

As between the Contractor and the Commonwealth, this Master Agreement identifies all of the terms, conditions and liabilities and obligations applicable between the parties. If any Click-wrap agreement provided with or incorporated into any Product contains any provisions purporting to define different or additional terms and conditions to be applicable between the Commonwealth, or any Authorized User, and the Contractor, then the Contractor hereby agrees to waive any such additional or different terms and conditions.

3. VENDORS MANUAL

This Contract 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 accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.

4. APPLICABLE LAWS AND COURTS

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

5. ANTI-DISCRIMINATION

The Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended and 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 Contractor is a faith-based organization, then it 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)

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 these requirements.
- B. 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.

6. ETHICS IN PUBLIC CONTRACTING

Contractor certifies that they have offered their proposal and have entered into this Contract 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 or obligations under this Contract, 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.

7. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By entering into this Contract with the Commonwealth of Virginia, the Contractor certifies that it does not, and shall not during the performance of the Contract for goods and /or services in the Commonwealth; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

8. DEBARMENT STATUS

Contractor certifies that it is not currently debarred by the Commonwealth from submitting proposals or from entering into contracts for the type of Goods and/or Services covered herein and by the original RFP, nor are they an agent of any person or entity that is currently so debarred.

9. ANTITRUST

By entering into this 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 Products or Services purchased or acquired by the Commonwealth of Virginia under this Contract.

10. PAYMENT

A. To Prime Contractor:

1. 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).
2. 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.
3. All Products or Services provided under this Contract or any purchase Order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which Authorized User is being billed.

4. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the *Virginia Debt Collection Act*.
5. **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, the Contractor understands and agrees 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. The 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 any Commonwealth Authorized User of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

B. To Subcontractors:

1. Contractor is hereby obligated:
 - A. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth or Authorized User for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
 - B. To notify the Authorized User and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
2. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one (1) 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 B.1.b 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 this primary Contract. The 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 Authorized User, 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 Authorized User, 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.

11. QUALIFICATIONS OF CONTRACTOR

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the contractor to perform the services/furnish the goods. The Commonwealth reserves the right to inspect, without advance notice, contractor's physical facilities at any time during the initial term and any subsequent renewal periods, to satisfy questions regarding the contractor's capabilities.

12. 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.

13. ASSIGNMENT OF CONTRACT

This Contract shall not be assignable by the Contractor in whole or in part without the prior written consent of the Commonwealth.

14. CHANGES TO THE CONTRACT

Changes can be made to the contract in any 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 Commonwealth 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 Commonwealth or the respective ordering entity a credit for any savings. Said compensation shall be determined by one (1) 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 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 Commonwealth'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 Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Commonwealth or Authorized User with all vouchers and records of expenses incurred and savings realized. The Commonwealth or Authorized User 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 Commonwealth or Authorized User within thirty (30) days from the date of receipt of the written order from the Commonwealth or Authorized User. If the parties fail to agree on an amount of adjustment, then 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 Commonwealth of Authorized User or with the performance of the Contract generally.

15. DEFAULT

In case of failure to deliver Systems or Products 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.

16. DRUG-FREE WORKPLACE

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

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

17. NONDISCRIMINATION OF CONTRACTORS

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 Contractor employs ex-offenders unless the Authorized User has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If this Contract is being awarded 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, then the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

18. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS

The eVA Internet electronic procurement solution, website 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 eProcurement solution by completing the free eVA Vendor Registration. All contractors shall register in eVA and pay the Vendor Transaction Fees specified below.

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

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
 - i. DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - ii. Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. 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, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

19. AVAILABILITY OF FUNDS

It is understood and agreed between the parties herein that the Commonwealth or an Authorized User submitting an Order shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.

20. 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.

21. 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 Commonwealth, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

22. TERM OF CONTRACT

The initial term of this Master Optional Contract shall be for a period of three (3) years from the date of final Contract execution ("Initial Term") through three (3) years – February 2, 2018 through February 1, 2021.

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) for Systems or Products have been accepted or Services completely performed.

23. RENEWAL OF CONTRACT

Following the Initial Term, and at the sole discretion of the Commonwealth, this Master Contract may be renewed for up to three (3) additional one (1) year successive renewal term periods, under the terms and conditions of the original Contract, and upon the mutual written agreement between the parties. Written notice of the Commonwealth's intent to

renew will be given approximately ninety (90) days prior to the expiration date of any Contract term period.

24. CANCELLATION OF CONTRACT

The Contract Officer named on the front and within the RFP, on the instruction of DGS reserves the right to cancel and terminate this Contract, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor. In the event the Initial Term is for more than twelve (12) months, then the Contract may be terminated by either party, without penalty, after the initial twelve (12) months of the Initial Term upon sixty (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 cancellation.

25. CONTRACTUAL DISPUTES

Contractual claims against an Authorized User shall be brought in accordance with Section 2.2-4363 of the Code of Virginia, although the following exceptions to Subsection (C) shall apply. 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 institute legal action prior to receipt of the Authorized User's decision on the claim, unless that Authorized User fails to render its decision within thirty (30) days.

Administrative procedures, as referenced in Sections 2.2-4363(D) and -4365 of the Code of Virginia, have not been adopted.

DGS has executed this Agreement solely in its capacity as the central procurement authority for the Commonwealth. In any dispute arising out of an order placed by an Authorized User, DGS shall not be joined as a party, except with the written consent of the Director of DGS. However, the Contractor shall provide DGS with prompt notice of any claim made, any suit brought by either party, or the disposition of a claim or suit by judgment, settlement, or otherwise. Claims that DGS has breached this Master Contract shall be made to DGS. In such cases, the procedure described above for claims against Authorized Users shall be followed, substituting "DGS" for "Authorized User" where appropriate.

Contractor shall not engage in self-help. In no event shall Contractor's remedies include the right to terminate any Order or Services under this Master Contract.

26. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, any Authorized Users, and the officers, agents, and employees of the Commonwealth and any Authorized Users, from and against any and all liabilities, claims, damages, losses, and actions of any kind or nature, whether at law or in equity, arising from or relating to (i) any act, error, omission, or misconduct of Contractor or its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement; or (ii) the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor and/or any services of any kind or nature furnished by the Contractor. The foregoing sentence shall not apply if a liability, damage, or loss is attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods, or equipment delivered.

27. E-VERIFY PROGRAM

Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such

contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

28. FINANCIAL WARRANTY

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

29. 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. Bidders responding to this solicitation should note that acceptance of payment by purchase card is mandatory (unless waived by DPS) within 90 calendar days of contract award.

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 Bank of America Visa 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 Bank of America Visa Card.

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

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

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

30. 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.

31. AUTHORIZED REPRESENTATIVES

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

COMMONWEALTH OF VIRGINIA

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UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS CONTRACT WITHOUT WRITTEN CONSENT OF THE AUTHORIZED REPRESENTATIVES.

32. 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.

33. COMPLIANCE WITH ALL LAWS

Contractor shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Contract prior to the initiation of work. The Contractor further expressly represents that it is a corporation, partnership, or limited liability company that it is in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Contract.

34. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor, not an employee or agent of DGS or the Secretariat of Veterans and Defense Affairs. Without limitation of the foregoing, the Contractor shall:

1. Not enter into any contract, agreement, or other commitment, or incur any obligation or liability, in the name or otherwise on behalf of DGS or The Secretariat of Veterans and Defense Affairs;
2. Not be entitled to any worker's compensation, pension, retirement, insurance, or other benefits afforded to employees of DGS or The Secretariat of Veterans and Defense Affairs;
3. Provide for all national income tax and other withholding relating to the Contractor's compensation;
4. Pay all social security, unemployment, and other employer taxes relating to the Contractor's performance of the services herein; and
5. Perform all reporting, recordkeeping, administrative, and similar functions relating to the Contractor's compensation.

35. SUBCONTRACTS

No portion of the work shall be subcontracted without prior written consent of the Contract Officer named within the RFP on behalf of DGS or The Secretariat of Veterans and Defense Affairs. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Contract Officer on behalf of DGS or The Secretariat of Veterans and Defense Affairs, 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.

36. PRICE ESCALATION DE-ESCALATION / PRICE ADJUSTMENTS

Price adjustments may be permitted for changes in the contractor's cost of providing goods and services under the contract. The "Services", "All Items", and other relevant categories of the CPI-U, U.S. City Average section of the Consumer Price Index of the U.S. Bureau of Labor Statistics, will be used as guides to evaluate requested price changes, as will other indices including Producer Price Index. No price increases will be authorized for 365 calendar days after the effective date of the

contract, with the exception that the Commonwealth will consider price adjustment requests six months (approximately 180 calendar days) after the effective date of the contract based on changes in the contractor's cost of fuel used for transportation in providing goods and services under this contract. Price escalation may be permitted at the end of 365 calendar days and each 365 calendar days thereafter and only where verified to the satisfaction of the purchasing office, with the exception that price escalation for the contractor's cost of fuel used for transportation in providing goods and services under this contract may be permitted at the end of six months (approximately 180 calendar days) and each six months (approximately 180 calendar days) thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. Contractor shall give not less than 30 days' advance notice of any price increase request, with documentation, to the purchasing office.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of goods or services are required to be communicated immediately to the purchasing office. If the Commonwealth elects to exercise the option to renew the contract for additional one-year periods, the same price adjustments as stated above will apply.

37. CONTRACTOR ACCESS TO COMMONWEALTH LOCATIONS

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

38. ADVANCEMENTS

The Commonwealth reserves the right to modify any contract that results from this solicitation to allow for progressive growth, knowledge, and advancements and/or any Federal, State or Local changes to bulk and commercial motor fuel/fuel card specifications, requirements, and/or regulations as specified. For any such modifications, contract pricing formula shall remain the same in calculating contract rates, unless an alternate formula is mutually agreed to by the Commonwealth and the contractor.

39. REGULATIONS

The contractor shall be responsible for complying with all federal, state, and local environmental and other regulations relating to curtailment services.

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.


CPOWER

BY:

 2017-11-09
10:55-05:00
Shelley Schopp
SVP Customer Fulfillment

COMMONWEALTH OF VIRGINIA (DPS)

BY:


NAME: TINA M RODRIGUEZ
Printed

TITLE:

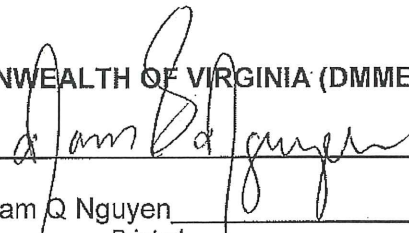
Statewide Strategic Sourcing Officer

DATE:

11/21/2017

COMMONWEALTH OF VIRGINIA (DMME)

BY:


NAME: Nam Q Nguyen
Printed

TITLE: Manager, VEMP

DATE: November 6, 2017

**ATTACHMENT A
TO
CONTRACT E194-77127-MA2668
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CPOWER**

PRODUCT AND PRICING SCHEDULE

Attachment "A" is hereby incorporated into and made an integral part of contract E194-77127-MA2668 between the Commonwealth of Virginia and **CPower**. In the event of any discrepancy between this "Attachment A" and the Contract, the provisions of the Contract shall control.

I. LISTING OF PRODUCTS AND PRICING

The pricing schedule below reflects Contractor's goods and/or services to be provided to the Commonwealth under this contract. This schedule represents the contractor's all-encompassing fees for the negotiated Systems, Products and/or Services.

Attachment A is the pricing as negotiated. See the pricing schedule at the end of this Attachment.

II. LOGISTICS

Contractor must adhere to any and all security requirements at any facilities that are served.

If applicable... A packing label must be on each box to include at a minimum: name, agency, address, and purchase order number. A packing list must be included with each shipment to include, at a minimum, the line item description, quantity ordered, quantity included, backordered items purchase order number and agency contact.

If applicable... Systems or Products judged by the Authorized User to be unacceptable may be rejected. All costs associated with rejection are the responsibility of the contractor. Over-shipments will be accepted at the Authorized User's discretion. The Contractor will be responsible for the disposition of all defective, damaged or rejected over-shipped products. Return authorization shall be provided by the Contractor within 14 calendar days of verbal notification.

III. REPORTING REQUIREMENTS

During the term of the contract, or any renewal thereof, the contractor agrees that the following reports shall be submitted to the Contract Officer. Failure to comply with reporting and payment requirements of this section may result in payment(s) being withheld until compliance with the plan is received and confirmed. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

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

A. Contractor's Quarterly Reports

CONTRACTOR'S REPORT OF SALES / SAVINGS

Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all invoiced sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of an invoiced fees as a result of savings realized is the price paid by the user for products and services on a Contract order as recorded by the Contractor. Contractor shall provide this report to the **Virginia Department of Mines, Minerals, and Energy (DMME), Walid M. Daniel; (phone) 804-382-4217** walid.daniel@dmme.virginia.gov with a copy to the DGS SSSO via email to tina.rodriquez@dgs.virginia.gov within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser, and other details as may be requested by the Commonwealth. The report is required to be in electronic MS Excel spreadsheet format (.XLS). The Contractor shall provide other reports pertaining to the contract as may be required by the Commonwealth.

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

PRICING SECTION

85% Commonwealth of Virginia Savings + 15% Vendor Fee

For procurement instructions, questions, etc. contact Virginia Department of Mines, minerals, and Energy (DMME), Walid M. Daniel at 804-382-4217.

The Curtailment Service Provider under Demand Response is intended to offer an economic incentive to achieve electric demand reduction to the Commonwealth of Virginia.

The percentages allocated to savings and fee / commission as well as any other aspect of the price of the services shall remain constant during the contract period and percentages shall remain constant during all renewal periods.

General Instructions:

To state agencies and other public bodies (as applicable)

1. Ordering Method: For this procurement, all agencies, other public bodies and entities authorized to use the contract, institutions and agencies of the Commonwealth of Virginia are **exempt** from placing orders in the eVA procurement system.
2. The applicable contract number, federal employer identification number (FEI), or eVA number, and item number (for itemized contracts) must be shown on each purchase order and copy, each facsimile transmission or given verbally when telephonic orders are placed.
3. Complaints: Any complaint that is due to a violation or breach of the Contract provisions shall be reported on an official DPS "PROCUREMENT COMPLAINT FORM" (Form # DGS-41-024). To facilitate notification, this form shall be completed by the ordering entity and sent to the contract vendor, with a copy sent to DPS to the address shown on the form. Contract vendors shall also use this form to initiate complaints concerning entities. This form may be downloaded

from the internet at the following link <http://eva.virginia.gov/learn-abouteva/files/VendorComplaintForm.doc> .

4. Both the contracting entity and the Contractor must agree upon accounts to be added to the program. The Department of Mines, Minerals and Energy (DMME) will act as an independent evaluator when needed.
5. Upon termination of this contract any balances owed to the Contractor for monitoring equipment or other services provided under this contact are forgiven and the balances reduces to zero.
6. Electrical work, other than monitoring equipment, required by an account to participate, this program must be contracted for outside of this agreement.

**ATTACHMENT B
TO
CONTRACT E194-77127-MA2668
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CPOWER**

STATEMENT OF NEEDS

Attachment "B" is hereby incorporated into and made an integral part of contract E194-77127-MA2668 between the Commonwealth of Virginia and **CPower**. In the event of any discrepancy between this "Attachment B" and the Contract, the provisions of the Contract shall control.

A. Detail Duties and Service Requirements by Vendor include:

1. Provide timely, detailed accounting of all demand response transactions to the Commonwealth Agencies, Institutions of Higher Education or Public Bodies, Director of Utilities or appointed representative.
2. Design a process to generate consistent revenues without exposing Commonwealth Agencies, Institutions of Higher Education or Public Bodies to undue risk.
3. Provide access to all PJM CSP programs. PJM – grid that controls power lines - Pennsylvania, New Jersey, Maryland. CSP- Curtailment Service Provider is Johnson Controls, parent company of Energy Connect.
4. Provide mechanisms that allow Commonwealth Agencies, Institutions of Higher Education or Public Bodies to initiate demand response transactions on either a full-service or self-service basis.
5. Maintain constant dialog with the appointed, at each Commonwealth Agencies, Institutions of Higher Education or Public Bodies participating in the program, representative that assures the success of the program.
6. Provide immediate communication and reconciliation of any issues of concern.
7. Ensure the work performed is completed so as to not adversely affect daily operations Commonwealth Agencies, Institutions of Higher Education or Public Bodies facility utilities remain in working order at all times, unless otherwise approved by the facility representative.
8. Notify, and receive approval from the appropriate Director of Utilities prior to blocking off or closing down any portion of buildings, grounds, or surrounding streets or alleyways. B. Payment Processing Services: Vendor shall provide payment processing services for all savings from demand response transactions. Vendor shall provide payment to customer, for the agreed upon per- cent age of savings within 30 days of the first of the month, which follows the date of the transaction. (Example: if transaction date is March 15, check should be received by customer no later than 30 days from April 1– or by April 30.)

B. Payment Processing Services: Vendor shall provide payment processing services for all savings from demand response transactions. Vendor shall provide payment to customer, for the agreed upon percentage of savings within 30 days of the first of the month, which follows the date of the transaction.

(Example: if transaction date is March 15, check should be received by customer no later than 30 days from April 1– or by April 30.)

C. Services Interruption and Security: Vendor shall provide all the labor, equipment, supplies and material for collecting energy consumption and demand data from the Building Automation System (BAS), or electric utility, analyzing data, and providing services on behalf of the Commonwealth's specified time limits to assure the performance of work in accordance with the terms of the RFP. The proposal will outline the tasks and responsibilities of the Offeror, the Commonwealth Agencies, Institutions of Higher Education and Public Bodies.

1. Data collection shall not interfere with the operation of the Building Automation System (BAS) or the ongoing collection of BAS data for other purposes.
2. Data collection devices shall be protected so that power interruption will not cause data loss.
3. Security protocols or hardware shall be provided to prevent hacking into the BAS from data collection devices or interconnections.
4. Failure of any data collection device shall not interfere or cause failure or shutdown of the BAS or connected systems.