



**REQUEST FOR PROPOSAL  
#V211-24-045**

**EXECUTIVE SEARCH SERVICES - ATHLETICS  
29 January 2024**

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**ATTACHMENTS:**

A: UNDERSTANDING OF REQUIREMENTS

B: CONFLICT OF INTEREST STATEMENT

C: OFFEROR DATA SHEET

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I. **PURPOSE:**

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified providers to establish a cooperative contract for Athletics Executive Search Firms to be used for the recruitment of employment positions in VMI's Athletics department.

II. **CONTRACT PERIOD:**

The initial term of this contract is from date of award through 30 June 2029 with five successive one-year renewals.

This solicitation is issued in accordance with the provisions of:

- A. [Procurement Manual for Institutions of Higher Education and their Vendors](#)
- B. [Governing Rules for Restructured Public Institutions of Higher Education](#)

III. **BACKGROUND:**

Founded in 1839 as the nation's first state military college, the Virginia Military Institute is organized under the laws of the Commonwealth of Virginia and is governed by a Board of Visitors appointed by the Governor. In accordance with the provisions of the *Code of Virginia*, the nearly 1700 cadets constitute a military corp.

VMI fields 18 teams on the NCAA Division I level. VMI sponsors 11 teams for men in baseball, basketball, cross country, football, lacrosse, rifle, soccer, swimming, indoor and outdoor track & field, and wrestling. VMI sponsors seven teams for women in cross country, rifle, soccer, swimming indoor and outdoor track & field, and water polo.

Approximately one-third of the Corps of Cadets plays on one of VMI's intercollegiate athletic teams making it one of the most active athletic programs among its student body. Of the VMI athletes who complete their eligibility, 92 percent receive their VMI diplomas.

A listing of athletic teams, coaches and rosters as well as current and past schedules/results may be viewed on the official web site [www.vmikeydets.com](http://www.vmikeydets.com).

VMI's athletic program returned to the Southern Conference on July 1, 2014. The Southern Conference (SoCon) is the nation's fifth-oldest NCAA Division I collegiate athletic association. The SoCon sponsors 20 varsity sports and championships that produce participants for NCAA Division I Championships with a membership that includes 10 institutions and a footprint that spans six states: Alabama, Georgia, North Carolina, South Carolina, Tennessee and Virginia. Current league members are The Citadel, East Tennessee State, Furman, Mercer, University of North Carolina/Greensboro, Samford, University of Tennessee/Chattanooga, VMI, Western Carolina and Wofford.

IV. **VASCUPP EXPANDED COOPERATIVE LANGUAGE:**

CONTRACT PARTICIPATION: Under the authority of the *Code of Virginia 2.2-4304*. Cooperative Procurement, it is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions or lead-issuing institution's affiliated corporations may access any resulting contract if authorized by the successful offeror(s).

Participation in this cooperative procurement is strictly voluntary. If authorized by the successful offeror(s), the resultant contract(s) will be extended to the public bodies indicated above to purchase at contract prices in accordance with contract terms. The successful offeror(s) shall notify the lead-issuing institution in writing of any such institutions accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The successful offeror(s) will provide semi-annual usage reports for all entities accessing the Contract. Participating entities shall place their own orders directly with the successful offeror(s) and shall fully and independently administer their use of the contract(s) to include contractual disputes, invoicing, and payments without direct administration from the lead-issuing institution. The lead-issuing institution shall not be held liable for any costs or damages incurred by any other participating public body as a result of any authorization by the successful offeror(s) to extend the contract. It is understood and agreed that the lead-issuing institution is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as the need may be.

**V. STATEMENT OF NEEDS:**

Successful offeror/s will provide VMI with a quality service to meet the needs of the Institute with, at a minimum, the following attributes to enhance current recruitment practices for vacant executive level positions:

- demonstrate qualifications and experience in the placement of candidates within higher education institutions;
- work with VMI's leadership throughout the search process regularly providing detailed, accurate and timely information;
- maintain confidentiality throughout the high-profile search process to ensure the integrity of the Institute, the candidate and the process;
- manage all inquiries, recommendations, applications, and assume responsibility for the search;
- establish a timeline for completion of each search and maintain that timeline with a pro-active approach to avoid or eliminate any delays;
- use all available resources to include current technology, professional relationships, and other applicable tools to research and vet qualified candidates;
- develop an assessment means to measure candidates' NCAA compliance history, legal issues, social behavior, et. al, to ensure an appropriate fit in VMI's culture;
- develop and present a short list of qualified candidates VMI's leadership;
- conduct criminal, financial, educational, and social media background checks for candidates presented to VMI for review;
- serve as a liaison between the Institute and the identified candidates and/or their representatives at the Institute's request;

**VI. RESPONSE PREPARATION AND SUBMISSION:**

A. General Requirements

1. RFP Response: To be considered for selection, Offerors must submit a complete response to this RFP. Response must be submitted electronically through [www.eva.virginia.gov](http://www.eva.virginia.gov)

No other distribution of the Responses shall be made by the Offeror.

2. Response Preparation

- a. Responses shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the Institute requiring prompt submission of missing information and/or giving a lowered evaluation of the response. Responses which are incomplete or lack key information may be rejected by the Institute at its discretion. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Responses should be prepared simply and economically providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- c. Responses should be organized in the order in which the requirements are presented in the RFP. All pages of the Response should be numbered. Each paragraph in the Response should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-letter should be repeated at the top of the next page. The response should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the response and designated as additional material. Responses that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. Should the proposal contain **proprietary information**, provide **one (1) redacted hard copy** of the proposal and all attachments with **proprietary portions removed or blacked out**. This copy should be clearly marked "*Redacted Copy*" on the front cover. The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. VMI shall not be responsible for the Offeror's failure to exclude proprietary information from this redacted copy. See section e. below for additional information. An electronic copy is required; printed material is optional.
- e. Ownership of all data, material and documentation originated and prepared for the Institute pursuant to the RFP shall belong exclusively to the Institute and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, to prevent disclosure the Offeror must invoke the protections of *Section 2.2-4342F* of the *Code of Virginia*, in writing, either before or at the time the data or other materials is submitted. The written request must specifically identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire Response document, line-item prices and/or total Response prices as proprietary or trade secrets is not acceptable and may result in rejection of the Response.

B. Specific Requirements

Responses should be as thorough and detailed as possible so that the Institute may rigorously evaluate Offerors' capabilities to provide the required services. Offerors are required to submit the following information as a complete Response:

1. Submit the RFP cover sheet and all addenda acknowledgements, if any, completed and signed as required.
2. Plan and methodology for providing the goods/services as described in Section V. Statement of Needs of this Request for Proposal.
3. A written narrative statement to include, but not be limited to, the expertise, qualifications, and experience of the firm and resumes of specific personnel to be assigned to perform the work.
4. Offeror Data Sheet, included as *Attachment C* to this RFP.
5. Small Business Subcontracting Plan, included as *Attachment E* to this RFP. Offeror shall provide a Small Business Subcontracting plan which summarizes the planned utilization of Department of Small Business and Supplier Diversity (SBSD)-certified small businesses which include businesses owned by women and minorities, when they have received Department of Small Business and Supplier Diversity (SBSD) small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts more than \$100,000 unless no subcontracting opportunities exist.
6. Identify the number and dollar value of sales your company had during the last twelve months with each VASCUPP Member Institution. A list of VASCUPP Members can be found at: [www.VASCUPP.org](http://www.VASCUPP.org).
7. Proposed Cost. See Section X. Pricing Schedule of this Request for Proposal.

**VII. SELECTION CRITERIA AND AWARD:**

A. Selection Criteria

Responses will be evaluated by Virginia Military Institute using the following:

No.	Criteria	Maximum Point Value
1	Offeror's Plan for Providing Services including timelines	20
2	Qualifications, including Technical, and Experience of Offeror/Personnel	20
3	Experience of Key Personnel assigned to this project	20
5	Small, Women-Owned, and Minority-Owned Participation Plan	20
6	Pricing	20
<b>Total Points</b>		<b>100</b>

B. Award

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals based on the evaluation factors included in the Request for Proposals, including price. Negotiations shall be conducted with the offerors so selected. Price shall be considered but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, VMI shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359D*). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is

clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the successful offerors' proposal as negotiated.

**VIII. METHOD OF PAYMENT**

Virginia Military Institute will authorize payment to the successful offeror after receiving satisfactory service and receipt of the successful offeror's correct invoice for services rendered.

Invoice documents shall include the contract number and purchase order number. Invoices must correspond with contract prices. Unless specified otherwise in a purchase order change form or a contract modification agreement, invoices shall be sent electronically to the following address: [payables@vmi.edu](mailto:payables@vmi.edu)

**IX. ADDENDUM:**

Any **ADDENDUM** issued for this solicitation may be accessed at <http://www.eva.virginia.gov> under the VBO.

**X. CONTRACT ADMINISTRATION:**

**BG Dallas B. Clark**, Deputy Superintendent for Finance and Support at the Virginia Military Institute, or his designee, shall be identified as the Contract Administrator and shall use all powers under the contract to enforce its faithful performance.

The Contract Administrator, or his designee, shall determine the amount, quantity, acceptability, fitness of all aspects of the services and shall decide all other questions in connection with the services. The Contract Administrator, or his designee, shall not have authority to approve changes in the services which alter the concept, or which call for an extension of time for this contract. Any modifications made must be authorized by Procurement Services at Virginia Military Institute through a written amendment to the contract.

## XI. GENERAL TERMS AND CONDITIONS

- A. **PURCHASING MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. The manual may be accessed electronically at <https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>.
- 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. VMI 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 Commonwealth of Virginia Vendor's Manual. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).

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

1. During the performance of this contract, the Contractor agrees as follows:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  - d. If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.
  - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract

for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

- f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the Contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each sub-contractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or sub-contractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
  - E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:  
By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
  - F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.  
  
If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.
  - G. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
  - H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**  
  
Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
  - I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the Contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Sub-contractors:**

- a. Within seven (7) days of the Contractor's receipt of payment from the Commonwealth, a Contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the sub-contractor(s) for the proportionate share of the payment received for work performed by the sub-contractor(s) under the contract; or
  - (2) To notify VMI and the sub-contractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the sub-contractor(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 sub-contractor 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 sub-contractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages Contractors and sub-contractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *COMMONWEALTH OF VIRGINIA PURCHASING MANUAL for INSTITUTIONS OF HIGHER EDUCATION and THEIR VENDORS*, 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/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. VMI may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt, unless the Contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Contractor shall, in writing, promptly notify VMI of the adjustment to be sought, and before proceeding to comply with the notice, shall await VMI's written decision affirming, modifying, or revoking the prior written notice. If VMI decides to issue a notice that requires an adjustment to compensation, the Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to VMI's right to audit the Contractor's records and/or to determine the correct number of

units independently; or

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

- P. **ADDITIONAL GOODS AND SERVICES:** VMI may acquire other goods or services that the supplier provides than those specifically solicited. VMI reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services under the same pricing, terms, and conditions and to make modifications or enhancements to the existing goods and services. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement. Such additional goods and services will be provided to VMI at favored nations pricing, terms, and conditions.
- Q. **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.
- R. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

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

- S. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- T. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and

warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

- U. **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 coverage at the time the contract is awarded. For construction contracts, if any sub-contractors are involved, the sub-contractor 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 sub-contractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<b><u>Profession/Service</u></b>	<b><u>Limits</u></b>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	<i>Code of Virginia § 8.01-581.15</i> <a href="https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/">https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/</a>
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

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

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

During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-contractor 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, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

Y. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** 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 by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

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

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

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

- Z. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that VMI shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- AA. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, bidders/offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids/proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.
- BB. **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.
- CC. **CIVILITY IN STATE WORKPLACES:** The Contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the Contractor or any sub-contractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

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

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

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

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

## XII. SPECIAL TERMS AND CONDITIONS

1. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at any time during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by VMI and upon mutual agreement of the Contractor. Such modification shall name the specific agency added or deleted and the effective date. The Contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
2. **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. VMI, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
3. **AWARD OF CONTRACT:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, VMI shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359D*). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.
4. **CANCELLATION OF CONTRACT:** VMI reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the Contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
5. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The Contractor assures that the information and data obtained as to personal facts and circumstances related to students or staff will be collected and held confidential, during and following the contract, and will not be divulged without the individual's and the University's written consent and only in accordance with federal law or 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 VMI of any breach or suspected breach in the security of such information. Contractors shall allow VMI to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
6. **CONTINUITY OF SERVICES:**
  - A. The Contractor recognizes that the services under this contract are vital to the University and must be continued without interruption and that, upon contract expiration, a successor, either the University

or another Contractor, may continue them. The Contractor agrees:

1. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  2. To make all University owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  3. That the University Contract Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- B. The Contractor shall, upon written notice from the Contract Office, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contractor Officer's approval.
- C. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in/phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.
7. **CONTRACT ADMINISTRATION:** VMI assigns "Contract Administrators" to each contract awarded. The Contract Administrator shall be the initial point of contact for the Contractor. Contract Administrators are charged with ensuring the terms and conditions of the contract are followed, payments are made in accordance to the contractual pricing schedule, and reporting noncompliance issues to the Procurement and Contracts Department at VMI. Contract Administrators **do not** have the authority to authorize changes and/or modifications to the contract. Should noncompliance issues exist and cannot be resolved at this level or changes/modifications to the contract are required, the assigned Contract Officer in the Procurement Services Department must be notified immediately by the Contract Administrator. The assigned Contract Administrator will be identified upon award.
8. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s) with the applicable eVA transaction fee assessed for each order.

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

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

<b>Name of Offeror:</b>	<b>RFP#</b>	
<b>Address:</b>	<b>Due Date:</b>	<b>Time:</b>
	<b>RFP Title:</b>	
<b>City, State, Zip:</b>	<b>Contract Officer:</b>	

10. **INDEMNIFICATION:** Contractor agrees to indemnify the Commonwealth of Virginia, its officers, agents and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
11. **LATE PROPOSALS:** To be considered for selection, proposals must be received by VMI by the designated date and hour. The official time used in the receipt of proposal is that time on the automatic time stamp machine in the Procurement Services. **The Institute is not responsible for delays in the delivery of mail by the U.S. Post Office, private couriers, or the Institute's internal mail system. It is the sole responsibility of the Offeror to insure that its proposal reaches the issuing office by the designated date and hour.** \*Proposal receipt scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regularly scheduled business day.
12. **REFERENCES:** Bidders shall provide a list of at least three references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.
13. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of VMI. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish VMI the names, qualifications and experience of their proposed sub-contractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its sub-contractor(s) and shall assure compliance with all requirements of the contract.
14. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
15. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such

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

16. **CERTIFICATION OF INTERNAL CONTROLS:** The Contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on Commonwealth of Virginia interests, the conduct of VMI programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The Contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the Contractor's internal controls. The most recent version of the report shall be provided to the purchasing office upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the Contractor's internal control processes and procedures are described in the most recent version of the report, the Contractor shall automatically submit the report to the purchasing office within a timely manner and shall describe the corrective actions to be put into place by the Contractor to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commonwealth to make a determination of breach of contract.

The Contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the Contractor certifies the destruction of the sensitive data at the end of the contract term.

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

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

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

- a certification signed by Contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commonwealth at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- a certification signed by Contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Contractor would otherwise be unable to perform under this Agreement without such price increase.
- as requested by the Commonwealth, written instructions authorizing the Commonwealth to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by Contractor.

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

- During the Term and for five (5) years after the termination of this Agreement, Contractor shall retain, and the Commonwealth and its authorized representatives shall have the right to audit, examine, and make copies of, all of Contractor's books, accounts, and other records related to this Agreement and Contractor's costs for providing goods to the Commonwealth, including, but not limited to those kept by the Contractor's agents, assigns, successors, and sub-contractors.
- Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have the right to terminate this Agreement for the Commonwealth's convenience upon 15 days' written notice to Contractor.

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

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

#### **X. METHOD OF PAYMENT**

The Contractor will be paid on the basis of invoices submitted in accordance with the RFP and negotiations.

#### **XI. PRICING SCHEDULE**

The Contractor shall provide pricing for all products and services included in proposal indicating one-time and on-going costs. This will be a fixed price contract.

#### **XII. ATTACHMENTS**

Attachment A: Understanding of Requirements

Attachment B: Conflict of Interest Statement

Attachment C: Offeror's Data Sheet

Attachment D: References

Attachment E: SWaM Business Utilization Certification and Utilization Plan







REFERENCES

Please list at least four references for whom you have performed each applicable category of service specified herein and within the past five years.

CLIENT: \_\_\_\_\_

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

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CLIENT: \_\_\_\_\_

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

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CLIENT: \_\_\_\_\_

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

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please use a separate sheet of paper for additional references.

## SWaM (Small, Woman- and Minority-owned Businesses) Utilization Plan

### Definitions

**Small Business:** "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude SBSB-certified women- and minority-owned businesses when they have received SBSB small business certification.

**Women-Owned Business:** Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

**Minority-Owned Business:** Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

**All small businesses must be certified by the Commonwealth of Virginia, Department of Small Business and Supplier Diversity (SBSB) by the due date of the solicitation to participate in the SWaM program.**

Certification applications are available through SBSB online at [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov) (Certification Division).

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### Instructions

- A. If you are certified by the Department of Small Business and Supplier Diversity (SBSB) as a small business, complete only Section A of this form. This shall not exclude SBSB-certified women-owned and minority-owned businesses when they have received SBSB small business certification.
- B. If you are not a SBSB-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to SBSB-certified small business in this section. Points will be assigned based on each offeror’s proposed subcontracting expenditures with SBSB-certified small businesses for the initial contract period as indicated in Section B in relation to the offeror’s total price.

### Section A

If your firm is certified by the Department of Small Business and Supplier Diversity (SBSB) **check which certification below and provide your certification number and date received:**

- \_\_\_\_\_ Small Business
- \_\_\_\_\_ Small and Women-owned Business
- \_\_\_\_\_ Small and Minority-owned Business

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

**Section B**

Populate the table below to show your firm's plans for utilization of SBSB-certified small businesses in the performance of this contract. This shall not exclude SBSB-certified women-owned and minority-owned businesses when they have received the SBSB small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, sub-contractors, suppliers, etc.

**B. Plans for Utilization of SBSB-Certified Small Businesses for this Procurement**

Small Business Name & Address  SBSB Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
<b>Totals \$</b>					