



# Request for Proposals

RFP #: 6675120MC

RFP Title: Public Relations & Marketing  
Campaign Services

Date: 1/5/2016



College of William and Mary  
George Mason University  
James Madison University  
Old Dominion University  
Radford University  
The University of Virginia  
Virginia Commonwealth University  
Virginia Military Institute  
Virginia Tech

A VASCUPP Member Institution

Request For Proposals RFP # 6675120MC

Issue Date: 1/5/2016

Title: Public Relations & Marketing Campaign Services

Issuing and Using Agency: Virginia Commonwealth University
Attention: Monique Curley
912 W Grace St., 5th floor
POB 980327
Richmond, Virginia 23284

Period of Contract: The initial contract term is one (1) year with four (4) successive one (1) year renewal options.

Proposals For Furnishing The Services Described Herein Will Be Received Until: 11:00 AM (EST) local time on Thursday, February 4, 2016.

All Inquiries For Information Should Be Directed To: ISSUING AGENCY, address listed above or to Phone: (804) 828-1072, VOICE TDD: (800) 828-1120.

This solicitation & any addenda are posted on the eVa website at: http://www.eva.virginia.gov

HARD-COPY, ORIGINAL PROPOSALS MUST BE RECEIVED IN VIRGINIA COMMONWEALTH UNIVERSITY'S DEPARTMENT OF PROCUREMENT SERVICES ON OR BEFORE THE DATE AND TIME DESIGNATED ON THIS SOLICITATION. ELECTRONIC SUBMISSIONS AND FACSIMILE SUBMISSIONS WILL NOT BE ACCEPTED IN LIEU OF THE HARD-COPY, ORIGINAL PROPOSAL. VENDORS ARE RESPONSIBLE FOR THE DELIVERY OF THEIR PROPOSAL. PROPOSALS RECEIVED AFTER THE OFFICIAL DATE AND TIME WILL BE REJECTED. THE OFFICIAL DATE AND TIME USED IN RECEIPT OF RESPONSES IS THAT TIME ON THE CLOCK OR AUTOMATIC TIME STAMP IN THE DEPARTMENT OF PROCUREMENT SERVICES.

IF PROPOSALS ARE SENT VIA US MAIL, MAIL DIRECTLY TO VIRGINIA COMMONWEALTH UNIVERSITY, PROPOSAL PROCESS DEPARTMENT, POB 980327, RICHMOND, VA 23298-0327. IF PROPOSALS ARE HAND DELIVERED OR SENT VIA FEDEX, UPS, OR ANY OTHER PRIVATE COURIER, DELIVER TO: VIRGINIA COMMONWEALTH UNIVERSITY, DEPARTMENT OF PROCUREMENT SERVICES, 912 W GRACE ST., 5th FLOOR, RICHMOND, VA 23284. THE RFP NUMBER, DATE AND TIME OF PROPOSAL SUBMISSION DEADLINE, AS REFLECTED ABOVE, MUST CLEARLY APPEAR ON THE FACE OF THE RETURNED PROPOSAL PACKAGE.

In Compliance With This Request for Proposals And To All Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services Described Herein In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation. Furthermore, The Undersigned Agrees Not To Start Any Work Relative To This Particular Solicitation Until A Resulting Formal Signed Purchase Order Is Received By The Contractor From University Purchasing. Any Work Relative To This Solicitation Performed By The Contractor Prior To Receiving A Formal Signed Purchase Order Shall Be At The Contractor's Own Risk And Shall Not Be Subject To Reimbursement By The University. Signature below constitutes acknowledgement of all information contained through links referenced herein.

NAME AND ADDRESS OF FIRM:

Form fields for firm information including Date, By (Signature In Ink), Name Typed, Title, E-Mail Address, Telephone, Fax Number, Toll free, DUNS NO., and FEI/FIN NO.

Form fields for certification status including REGISTERED WITH eVA, VIRGINIA DSBSD CERTIFIED, DSBSD CERTIFICATION #, SMALL BUSINESS, MINORITY-OWNED, and WOMEN-OWNED.

A Pre-Proposal conference will be held. See Section V. Pre-Proposal Conference herein.

THIS SOLICITATION CONTAINS 24 PAGES.

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## I. PURPOSE:

The intent and purpose of this Request for Proposals (RFP) is to establish a contract with a qualified source to develop and execute a national and international publicity campaign to establish and launch the Institute for Contemporary Art (ICA) as one of the nation's premiere contemporary art institutions and a catalyst for creative dialogue in Richmond, VA, the U.S., and internationally for Virginia Commonwealth University (the lead issuing institution and hereafter referred to as "the University" or "VCU"), an agency of the Commonwealth of Virginia.

## II. OPTIONAL USE CONTRACT:

The resulting contract(s) will be an optional use contract. VCU is in no way required to make purchases from the Contractor and may in its sole discretion purchase the identical and/or similar goods/services from other sources. Any estimates/quantities contained herein do not represent a purchase commitment by VCU.

## III. THE UNIVERSITY:

Located on two downtown campuses in Richmond, VCU enrolls more than 31,000 students in 216 certificate and degree programs in the arts, sciences and humanities. Sixty-nine of the programs are unique in Virginia, and 28 graduate and professional programs are ranked among the best in the nation in U.S. News & World Report's "America's Best Graduate Schools," including the No. 1 ranked sculpture and nurse anesthesia programs. As one of the nation's top research universities, VCU attracts more than \$255 million a year in sponsored research funding.

VCU Medical Center is one of the nation's leading and Central Virginia's only academic medical center. It includes the 865-bed MCV Hospitals and outpatient clinics, MCV Physicians - a practice of more than 600-physician-faculty, and the health sciences schools of VCU.

VCU is an urban leader, forging ties with business, industry and government in such innovative projects as the collocation of the schools of Business and Engineering, the da Vinci Center for Innovation in Product Design and Development and the Virginia BioTechnology Research Park.

The university and its medical center are the largest-single employer in the Richmond area, with more than 18,650 employees, including almost 2,000 full-time instructional faculty — many of them nationally and internationally recognized in their fields. VCU's direct economic impact to Virginia is estimated to be \$3.6 billion in annual spending that supports 43,705 jobs.

VCU's 16 varsity sports compete at the NCAA Division I level as members of the Atlantic 10 Conference. In recent years, VCU has participated in NCAA Tournaments in men's and women's basketball, baseball, golf, men's soccer and men's and women's tennis, including the VCU men's basketball's run to the Final Four.

## IV. REPORTING AND DELIVERY REQUIREMENTS:

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages Contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts or other contractual opportunities. By submitting a proposal, Offerors certify that all information provided in response to the Request for Proposals is true and accurate. Failure to provide information required by this Request for Proposals will ultimately result in rejection of the Proposal.

REPORT ON THE PARTICIPATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES

Unless the contractor is a DSBSD certified small business, the contractor shall submit quarterly reports on the direct involvement of Department of Small Business and Supplier Diversity (DSBSD) certified SWaM Businesses in the performance of the contract. The report shall specify the actual dollars spent to date with Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses based upon the Contractor's commitment for utilization of DSBSD SWaM Businesses.

The Contractor shall provide this information to:

Virginia Commonwealth University  
Department of Procurement Services  
Attn: Monique Curley  
912 W. Grace Street, P.O. Box 980327  
Richmond, VA 23284  
Email: mdcurlley@vcu.edu

Failure to submit the required information will be considered a contract compliance issue and will be addressed accordingly. In addition, failure to submit the required information will result in invoices being returned without payment.

V. PRE-PROPOSAL CONFERENCE:

**OPTIONAL PRE-PROPOSAL CONFERENCE:** An optional pre-proposal conference will be held at 12:00PM (EST) on 1/21/2016 at VCU Institute for Contemporary Art Temporary Location, 818 W. Broad St., Richmond, VA 23284. The purpose of the conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Note: Offerors are encouraged to submit questions at least two (2) business days in advance of the pre-proposal conference by email to Monique Curley at mdcurlley@vcu.edu.

While attendance at this conference will not be a prerequisite to submitting a proposal, Offerors who intend to submit a proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

Offerors may participate in the pre-proposal conference via conference call by:

- Using the following "Dial-In" numbers:
- 866-842-5779 (United States & Canada);
- 832-445-3763 (International);
- Using Conference Code #8291055716: Enter when prompted followed by the "#" sign;
- Dialing the appropriate "Dial-In" number at the scheduled time.

Note: Offerors who participated in the pre-proposal conference via conference call shall submit an email to Monique Curley at mdcurlley@vcu.edu within one (1) business day of the pre-proposal conference, confirming the Offerors participation and the Offeror's contact information.

**The last day for any questions shall be January 28, 2016.**

## VI. BACKGROUND:

In 2014, VCU announced plans to launch the Institute for Contemporary Art (ICA). The \$37 million building, designed by Steven Holl Architects, is scheduled to open to the public in fall 2017.

The Institute for Contemporary Art (ICA) at Virginia Commonwealth University (VCU) is a non-collecting institution that showcases a fresh slate of changing exhibitions ranging from innovative visual and performing arts to various forms of design and film. Part exhibition and performance space and part laboratory and incubator, the ICA provides a place to explore new ideas, objects, experiences and materials related to the central issues of our time.

Mirroring the cross-disciplinary approach at the VCU School of the Arts (VCUarts), one of the nation's leading art schools, the ICA creates a new environment for artists from around the world to test unconventional ideas and inspire audiences from throughout Richmond and around the world. This dynamic setting supports a mix of artistic vision, creative collaboration, and community engagement with the goal of questioning assumptions, encouraging critical discourse, and illuminating our lives.

The 3-story, 41,000 square foot building, sited at Richmond's busiest intersection on the corner of Belvidere and Broad streets directly off of Interstate 95, will form a gateway to the university and the city. The ICA will feature dual entrances—one facing Richmond and the other fronting VCU's campus. The first floor of the ICA includes a large gallery, cafe, shop, and open forum for community events. The second floor holds an additional two galleries and a "flexible learning space" for educational programming that will be open to the public free of charge. The third floor features a dramatic, 35-foot tall gallery for oversized installations and suspended artworks, as well as the administrative suite and boardroom. The lower level holds art storage and prep areas, a wood shop, a green room for performers, a lower lobby for visitors, the catering kitchen, and additional offices for staff.

Additionally, the ICA building will include a 250-seat auditorium for screenings, performances, and a variety of programs designed for the entire Richmond community. To date, the ICA has just \$2.1 million remaining in its capital campaign. An endowment campaign is ongoing.

### The ICA and VCU's Quest for Distinction

In 2011, VCU launched a six-year strategic plan, the Quest for Distinction, which sets a vision for VCU to be the nation's top urban, public research university that will be distinguished by its commitments to significantly strengthen academic quality and ensure student success at all levels. In 2015, VCU refined its Quest goals to focus on the following themes:

#### Theme I

Become a leader among national research universities in providing all students with high-quality learning/living experiences focused on inquiry, discovery and innovation in a global environment

#### Theme II

Attain distinction as a fully integrated urban, public research university through contributions in human health, research, scholarship and creative expression that advance knowledge and enhance the quality of life

#### Theme III

Become a national model for community engagement and regional impact

VCU's strategic plan continues to provide a framework for capitalizing on the outstanding assets that form the VCU experience - a commitment to educational quality, an environment that embraces diversity, an evolving research program with substantial increases in extramural funding, pre-eminent academic programs, an engaged community and a growing alumni base.

With regard to Virginia Commonwealth University faculty and students, the ICA is an integral part of the Quest for Distinction.

- VCU's #1-ranked program is the School of the Arts and the ICA is an essential counterpart to the School, educating visual and performing artists through high-quality learning/living experiences focused on inquiry, discovery, and innovation globally.
- ICA is recruiting progressive and diverse faculty, staff, and leaders with skills and talents to advance quality teaching and learning, along with high-impact research, scholarship and creative expression.
- ICA is already working with diverse students and faculty and will enable them to serve as leaders in a well-educated workforce.
- ICA will attain distinction by contributing to research, scholarship and creative expression that advance knowledge and enhance the quality of life
- Through exhibitions, publications, and programs, ICA will increase high-impact research, scholarship and creative expression
- ICA will grow and support the next generation of researchers and scholars who will focus on the discovery of new knowledge that advances the human experience and quality of life.
- ICA will increase interdisciplinary and inter-professional scholarship and practice among the arts, humanities, and sciences.
- ICA is committed to prioritizing community engagement and regional impact, focusing on strategic university-community engagement that addresses critical needs and opportunities in the region
- ICA will enhance, integrate and disseminate community-engaged scholarship, service-learning and outreach.

The ICA is dedicated to lifelong learning for people at all stages of education. The entire museum and all of its associated programs should be considered educational. All of the galleries, public spaces, and auditorium will be used for educational purposes including seminars, classes, and assignments, and as such the ICA in its entirety should be considered a dynamic classroom.

- ICA will explore and institutionalize effective ways to enable collaboration with academic departments across the university;
- ICA will play an educational role in the teaching and training undergraduates and graduate students; ICA has the unique potential to engage effectively and deeply with academic and curricular agendas. It will emphasize building long-term relationships with faculty and encourage involvement by faculty from a range of disciplines, beyond art and art history; *even before it has been constructed ICA is already partnering with faculty and students to develop projects in VCUarts, the Fast Track MBA Program in the Business School, the BrandCenter and others.*
- ICA will work with faculty to link its special exhibitions, visiting artists, scholars, lectures, and various public programs directly to course offerings and to student or faculty scholarship;
- ICA curators, staff and faculty members will train students in skills related to museum work through formal courses, connoisseurship, and through hands-on, object-based projects and internships;
- ICA faculty members and partners will research and develop important scholarly publications, journal articles, and symposia that enable faculty and students to present their research to the scholarly world;
- ICA will always work toward the overarching goal of broadly integrating of the museum into the academic life of VCU.
- ICA will be a resource for—and partner in—a great range of the educational activities of VCU and cultural partners throughout the city of Richmond and the Commonwealth of Virginia
- ICA will work with VCU to offer student internships and fellowships;
- ICA hopes to offer faculty incentives for development of courses using the exhibitions and visiting artists and scholars;
- ICA will work with interdisciplinary faculty members to develop exhibitions, ranging from small course-support shows to multi-year projects involving scholarly research by multiple academic partners.

VII. DESCRIPTION OF REQUESTED GOODS/SERVICES AND PROPOSAL RESPONSE REQUIREMENTS AND SUBMISSION INSTRUCTIONS:

This section describes VCU's requested goods and/or services and the areas to be addressed in Offeror's proposal. **The areas to be addressed are italicized and in bold.** Proposal response must be written in the same order as outlined below. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities. Emphasis should be placed on completeness and clarity of content. Mandatory requirements are designated by the words shall or must and non-mandatory requirements are designated by the words should or may. Failure to submit all information requested may result in the elimination of the proposal from consideration. Proposals which are substantially incomplete or lack key information may be rejected by VCU.

A. Statement of Needs

1. A full-service marketing communications and consultation agency to assist in the development and execution of an integrated public relations and marketing campaign to support ICA's vision, mission, and public opening in 2017. The agency should work with the ICA's Director, and senior leadership, including its Director of Communications, Curator, Director of Development, Director of Education and Community Engagement, and Director of Administration, as well as internal VCU resources in the Division of University Relations to develop and shepherd strategic efforts to ensure maximum visibility and coverage of the ICA's launch, with significant efforts being taken to ensure maximum visibility in the months leading up to the opening, and the months following the ICA's inauguration.
2. Specifically, services shall include:
  - a) General Counsel and strategy on PR/Communications:
    - (a) Lead weekly update and strategy calls with ICA leadership
    - (b) Serve as sounding board for ICA PR and communications initiatives
    - (c) Serve as sounding board on marketing and advertising for the opening
    - (d) Serve as sounding board and provide counsel on syncopation of opening events
  - b) Media outreach and material development:
    - (a) Develop press releases and orchestrate national announcements for major initiatives:
      - (i) Staff/curatorial appointments
      - (ii) Programming/exhibition announcements
      - (iii) Opening date, public programming announcements
      - (iv) Completion of the capital campaign/launch of endowment campaign
    - (b) Review and provide feedback on additional press releases generated by the ICA for other news moments such as significant capital campaign gifts, additional staff appointments and construction milestones
    - (c) Review of additional ICA press materials generated and/or updated by the ICA- including project backgrounders, leadership biographies, and additional materials for use at key moments throughout the project
    - (d) Development of national/international media lists and distribution of nationally-relevant press releases to art, architecture, design, education, culture, travel and philanthropy news contacts.
    - (e) Ongoing engagement of national/international media to secure ICA coverage in long-lead and short-lead outlets across a range of print, broadcast, and online platforms.

- (f) Identifying opportunities to include the ICA in national trend stories and national special sections (i.e. New York Times Museum Section).
- c) Additional services requested:
  - (a) Orchestration of one-on-one meetings for the Director and curator with NYC and Washington, D.C.-based media (and other markets as appropriate)
  - (b) Planning and execution of New York media briefing (supplemental fees and expenses apply)
  - (c) Planning and execution of hard hat tours for national/international architecture media and consulting on hard hat tours for local/regional media
  - (d) Coordination and counsel regarding early media visits, national exclusive requests and architectural photography
  - (e) Planning and execution of press preview for local, national, international media (including development of invitation, scenario, speaking points and tour schedule)
  - (f) Presence of two staff members in Richmond during opening week to provide on-site support for the press preview and other opening events
- d) VCU's target campaign schedule for the ICA is as follows:
  - (a) Contract award: Early 2016
  - (b) Campaign development and media outreach: Ongoing
  - (c) New York press briefing: Spring/Fall 2016
  - (d) ICA Inauguration Fall 2017
  - (e) Continued media cultivation following opening: Fall 2017-Spring 2018
- 3. The firm that is selected must be technically and professionally capable of providing the services described herein.
  - a) As evidenced by the nature of the tasks listed above, VCU expects to have a close working relationship with the firm, and requires the firm to demonstrate a high degree of experience and proficiency in the conduct of the various services performed.
  - b) The firm should have extensive experience in working with the contemporary arts and higher education. In addition, VCU expects the firm to comply with current industry standards and will maintain appropriate expertise at the firm's own expense.
  - c) Firm should have conducted at least three (3) successful publicity campaigns in the areas outlined above within the past three (3) years.
  - d) Firm should have sufficient staff to provide publicity campaigning and counseling services to meet VCU requirements.

***Firm should provide:***

a) ***Introduction:***

***Provide an introduction of the firm and all major subcontractors who will be involved in the performance of the work. Include primary business experience, length of time in business, ownership, office locations, and specific location of the principal office from where VCU work will be performed and any other information of an introductory nature.***

b) **Qualifications of the Firm:**

*Describe how your firm's overall experience demonstrates your ability to successfully complete the Statement of Needs. Provide a detailed list of publicity campaigns and counseling services you have provided to clients over the past five years, highlighting your firm's experience with contemporary art and higher education.*

c) **Qualifications of the Staff:**

*Identify the staff members who will provide the services required by the Statement of Needs, including years and type of experience for each person. Experience should include number of years at current firm as well as all prior service. The party in charge of the VCU account must have at least five (5) years' experience with contemporary art and higher education.*

d) **Comparable Services:**

*Provide a brief list and description of comparable clients and their publicity campaigns which were successfully concluded within the last three years.*

e) **Work Plan:**

*The Work Plan must contain a comprehensive description of services including the following elements:*

*(a) **General** – This section of the proposal must contain sufficient detail to convey the methodology or work plan contemplated for use. Offerors must describe how the services listed in the Scope of Need may be performed.*

*(b) **Deliverables** – Fully describe all of the deliverables to be submitted under the proposed contract.*

*(c) **Outcomes and Performance Measurement** – Describe the impacts/outcomes the firm intends to achieve, including how these outcomes would be monitored, measured and reported to the University.*

*(d) **Overall Risk** - Define risks significant to the success of the work. Include how the firm propose to effectively monitor and manage these risks, including the reporting of risks to the University (i.e., how the firm will manage staff turnover or other issues that may negatively impact the work, there potential and how the firm would propose to mitigate them).*

*(e) **Other** – Provide any other information the firm deems relevant to describing the work plan.*

f) **References:**

*List of three references for whom similar services were provided, preferably of public institutions of higher education or a similar sized organization.*

g) **Provide a list of institutions of higher education with which the firm has a signed term contract.**

4. Other related goods/services:

*Describe other products and/or services provided by your firm that may be utilized by VCU. Explain how the fee schedule would be established for these products/services during the contract term (or submit the fee schedule) and your firm's ability to provide most favored nations pricing. Also, explain how VCU would be notified of newly introduced products/services.*

5. Sustainability:

*Provide information to demonstrate the overall environmental impact of your proposed approach. Include information on your recommendations to reduce the environmental impact and create efficiencies.*

6. Small, Women-Owned and Minority-Owned Business Commitment:

**Firm must submit complete Appendix I which is available at RFP Website Link Appendix 1 <http://go.vcu.edu/procurement-purchasing> unless the firm is a DSBSD certified small business. DSBSD certified small businesses must include their certification number on the coversheet of this RFP, but are not required to complete Appendix I.**

7. Invoicing and Payment:

**Firm must submit complete Appendix II which is available at: RFP Website Link Appendix 2 <http://go.vcu.edu/procurement-purchasing>**

8. Price Schedule:

**Firm should provide pricing detailing monthly retainer fees for the services described above. Monthly retainer fees should be provided according to the following schedule:**

<b>March 2016 – June 2016</b>	<b>Ongoing media outreach and planning</b>
<b>July 2016 – May 2017</b>	<b>Increased media outreach</b>
<b>June 2017 – August 2017</b>	<b>Intensive outreach and opening preparation</b>
<b>September 2017</b>	<b>Opening month</b>
<b>October 2017 – March 2018</b>	<b>Ongoing outreach related to opening; media cultivation and long-term goal setting</b>

**In addition to a schedule of monthly retainer fees, firm should provide a schedule of estimated expenses for services above and beyond the monthly retainer fees, including press briefing in New York City, and estimated travel allowances for agency staff to be present in Richmond, VA during the inauguration of the ICA.**

- B. Proposal Submission Instructions:

1. Complete and return page 1 of the RFP. Proposals shall be signed by an authorized representative of the Offeror.
2. Complete and return signed addenda acknowledgments (if applicable).
3. Submit one (1) original hard copy (paper) document of the entire proposal, including all attachments and proprietary information. The original proposal must be clearly marked on the outside of the proposal.
4. Submit one (1) unsecured, electronic copy (on a disc or flash drive) of the entire proposal including all attachments and EXCLUDING ANY PROPRIETARY INFORMATION. This disc or flash drive must be clearly marked on the outside that it excludes proprietary information.
5. Submit one (1) unsecured electronic copies (on a disc or flash drive) of the entire proposal, including all attachments and proprietary information.
6. If applicable, the outside of the proposal must be marked to denote proprietary information is contained in the documents. **Written notice of proprietary information must be submitted as the first page of the Offeror's proposal.** Notice must specifically identify the applicable portions of the Offeror's proposal that contains data or materials to be protected and state the reasons why protection is necessary. In addition, the specific (i.e. specific words, figures or paragraphs) proprietary or trade secret material submitted, must be identified on the applicable page(s) within the Offeror's proposal, by some distinct method, such as highlighting, underlining, etc. **The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.**
7. Communications regarding this Request for Proposals (RFP) shall be formal from the date of issue for this RFP, until either a Contractor has been selected or the University Purchasing Department rejects all proposals. Formal communications shall be directed to the University Purchasing Department. Informal communications including but not limited to, request for

information, comments or speculations, regarding this RFP to any University employee other than a Purchasing Department representative may result in the offending Offeror's proposal being rejected.

8. No other distribution of the proposal shall be made by the Offeror.

Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

The version of the solicitation issued by VCU as amended by any addenda is the mandatory controlling version of the document. Any modification of or additions to the solicitation by the Offeror shall not modify the official version unless accepted in writing by the University. Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State 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, the Offeror must invoke the protections of Section 34F of The Governing Rules, in writing, either before or at the time the data or other material is submitted.

#### VIII. ORAL PRESENTATION:

Offerors who submit a proposal in response to this RFP may be required to conduct an oral presentation of their proposal to VCU. Oral presentations are an option and may or may not be required. Should an oral presentation be required, VCU will designate the date and location for the presentation; the date is critical and alternative dates will not be available.

Offerors who are invited to conduct an oral presentation shall include the individual(s) who would be the primary point of contact for VCU, on the Offerors presentation team.

#### IX. EVALUATION AND AWARD CRITERIA:

Proposals will be evaluated based upon the information provided in the Offeror's proposal using the following criteria: Offeror's qualifications and experience; methodology /approach to providing the requirements stated herein; price; and the Offeror's status as a Virginia certified SWaM Business or the Offeror's plans to utilize Virginia DSBSD certified SWaM Businesses in the Offeror's performance of the contract. Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals. Negotiations shall be conducted with Offerors so selected. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its opinion, has made the best offer, and shall award the contract to that Offeror. The Institution 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 reason why a particular proposal was not deemed to be the most advantageous. (Governing Rules Section 49.D) Should the Institution determine in writing and in its sole discretion that only one Offeror has made the best proposal, 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.

Notice of Award(s) or Notice of Intent to Award may be accessed electronically at <http://www.eva.virginia.gov>.

#### X. GENERAL TERMS AND CONDITIONS:

This solicitation is subject to the provisions of the Commonwealth of VA Purchasing Manual for Institutions of Higher Education, which can be accessed electronically at

<https://vascupp.org/hem.pdf>

and the following terms and conditions (**Firms are required to self-register in eVA prior to award. See provision "W" in 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. In addition, the manual may be accessed electronically at <http://procurement.vcu.edu/> or a copy can be obtained by calling University Purchasing at (804) 828- 1077.
- B. APPLICABLE LAW AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The 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 Section 2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2- 4343.1).

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) Virginia Commonwealth University is an equal opportunity/affirmative action institution providing access to education and employment without regard to age, race, color, national origin, gender, gender identity, gender expression, religion, sexual orientation, genetic information, veteran's status, political affiliation or disability. As such, the Contractor will not discriminate against any employee or applicant for employment because of age, race, color, national origin, gender, gender identity, gender expression, religion, sexual orientation, genetic information, veteran's status, political affiliation or disability or any other basis prohibited by state law related to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
    - c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their proposals, Offerors certify that they do not and will not during the performance of this contract employ illegal alien

workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

- F. DEBARMENT STATUS: By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

1. PAYMENT:

a) 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 the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- (e) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

b) To Subcontractors:

(a) Contractor awarded a contract under this solicitation is hereby obligated:

- (i) To pay the Subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the Subcontractor(s) under the contract; or
- (ii) To notify the agency and the Subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

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

- J. PRECEDENCE OF TERMS: Paragraphs A-J of these General Terms and Conditions 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.
- K. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the Commonwealth that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- L. 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.
- M. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- N. CHANGES TO THE CONTRACT: Changes can be made to the Contract in any one of the following ways:
1. 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.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a) By mutual agreement between the parties in writing; or
    - b) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    - c) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the

contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- O. 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.
- P. 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.
- Q. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Unless the Offeror clearly indicates in its proposal that the product offered is an "equal" product, such proposal will be considered to offer the brand name product referenced in the solicitation.
- R. TRANSPORTATION AND PACKAGING: By submitting their proposals, all Offerors certify and warrant that the price offered for F.O.B. 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.
- S. INSURANCE: By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

Minimum Insurance Coverages and Limits Required for Most Contracts:

1. Worker's 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. Employers Liability - \$100,000.
  3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- T. 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 violation 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.
- U. NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, or against faith-based organizations or any other basis prohibited by state law relating to discrimination in employment. 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.
- V. As applicable, federal law requires compliance with the following for all federal government contracts: 1. 41 CFR § 60-1.4 Equal Opportunity Clause prohibiting discrimination on the basis of race, color, religion, sex, or national origin. 2. 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulation prohibit discrimination against qualified individuals on the basis of disability (60-741.5(a)) and protected veteran status (41 CFR 60-300.5(a)), and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.
- W. 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.

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.

- X. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA): The following provision applies only if Selected Firm/Vendor will have access to the University's education records as defined under the Family Educational Rights and Privacy Act (FERPA): The Selected Firm/Vendor acknowledges that for the purposes of this agreement it will be designated as a "school official" with "legitimate educational interests" in the University education records, as those terms have been defined under FERPA and its implementing regulations, and the Selected Firm/Vendor agrees to abide by the limitations and requirements imposed on school officials. Selected Firm/Vendor will use the education records only for the purpose of fulfilling its duties under this agreement for University's and its students' benefit, and will not share such data with or disclose it to any third party except as provided for in this agreement, required by law, or authorized in writing by the University

#### XI. SPECIAL TERMS AND CONDITIONS:

- A. GOVERNANCE: The terms and conditions of RFP #6675120MC govern the contract and not any Contractor terms and conditions or services agreement.
- B. ADVERTISING: In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to Virginia Commonwealth University will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- C. AUDIT: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- D. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- E. BEST AND FINAL OFFER (BAFO): At the conclusion of negotiations, the Offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the Offeror(s). The Offeror(s) proposal will be re-evaluated to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.
- F. PROPOSAL ACCEPTANCE PERIOD: Any proposal in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days, the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is cancelled.
- G. PROPOSAL PRICES: Proposal prices shall be in the form of a firm unit price for each item during the contract period.
- H. CANCELLATION OF CONTRACT: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor. In the event the initial contract period is for more than twelve (12) months, the

resulting contract may be terminated by either party, without penalty, after the initial twelve (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.

- I. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
- J. **DRUG FREE WORKPLACE:** The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees and/or agents performing services on state property are prohibited:
  1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
  2. Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).
  3. The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.
- K. **IDENTIFICATION OF PROPOSAL:** The proposal package should be identified as follows:

From:	Name of Offeror	Due Date	Time
	Street or Box Number	RFP No.	
	City, State, Zip Code +4	RFP Title	

Name of Contract / Purchase Officer or Buyer: Monique Curley

The package should be addressed as directed on Page 2 of the solicitation.

If a proposal is not clearly identified, the Offeror takes the risk that the proposal may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- L. **LATE PROPOSALS:** To be considered for selection, proposals must be received by the issuing office by the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the issuing office. Proposals received in the issuing office after the date and hour designated are automatically disqualified and will not be considered. The University is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intrauniversity 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.
- M. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from 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.

- N. LIMITATION OF LIABILITY: To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.
- O. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this 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. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- P. RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth for (four (4) successive one (1) year periods under the terms and conditions of the original contract except as stated in 1. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew should be provided approximately 60 days prior to the expiration date of each contract period:
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one (1)-year period, the contract price(s) for the additional one (1) year shall not exceed the contract price(s) of the previous contract period increased/decreased by more than the percentage increase/decrease of the "SERVICES" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- Q. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency 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.
- R. WARRANTY (COMMERCIAL): The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty must be furnished with the proposal.
- S. POLICY OF EQUAL EMPLOYMENT: Virginia Commonwealth University is an equal opportunity/affirmative action employer. Women, Minorities, persons with disabilities are encouraged to apply. The University encourages all vendors to establish and maintain a policy to insure equal opportunity employment. To that end, Offerors should submit along with their proposals, their policy of equal employment.
- T. ELECTRONIC COPIES OF PROPOSALS: The successful Contractor may be required to provide the VCU Department of Procurement Services with a copy of the Contractor's entire original proposal (to include all attachments), and all subsequent correspondence (i.e. responses to requests for clarification and documents generated through the negotiation process) in an unsecured electronic format (i.e. email, disc – CD or DVD or flash drive). **The Contractor SHALL NOT INCLUDE ANY PREVIOUSLY IDENTIFIED PROPRIETARY INFORMATION IN THE ELECTRONIC FORMAT; VCU will post the Contractor's original proposal, and all subsequent correspondence on the VCU Department of Procurement Services Website, VCU shall not be responsible for the Contractor's failure to exclude proprietary information submitted in the unsecured electronic format).**

- U. GRAMM-LEACH-BLILEY ACT: The Contractor shall comply with the Act by implementing and maintaining appropriate safeguards to protect and prevent unauthorized release of student, faculty and staff nonpublic information. Nonpublic information is defined as social security numbers, or financial transactions, bank, credit and tax information.
- V. RIGHTS AND LICENSE IN AND TO THE UNIVERSITY DATA: The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and the Contractor has a limited, nonexclusive license to use these data as provided in this agreement solely for the purpose of performing its obligations hereunder. This agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the agreement.
- W. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS: Contractor shall ensure that its employees who will have potential access to University Data have passed appropriate, industry standard, background screening and possess the qualifications and training to comply with the terms of this contract.
- X. CONFIDENTIALITY: The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with Section 2.2-4342 F. of the *Code of Virginia*. All trade secret or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.
- Y. INTELLECTUAL PROPERTY DISCLOSURE/RIGHTS: Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared by the Contractor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
- Z. DATA PRIVACY:
  - 1. Contractor shall use University Data only for the purpose of fulfilling its duties under this contract and shall not share such data with or disclose it to any third party without the prior written consent of the University, except as required by this contract or as otherwise required by law.
  - 2. University Data will not be stored outside the United States without prior written consent from the University.
  - 3. Contractor shall provide access to University Data only to its employees and subcontractors who need to access the data to fulfill Contractor's obligations under this contract. Contractor shall ensure that employees who perform work under this contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this contract.
- AA. DATA SECURITY:
  - 1. The Contractor shall store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) in accordance with latest version of National Institute of Standards and Technology Special Publication 800-53.
  - 2. If the Contractor stores Personally Identifiable Information as part of this contract, the Contractor warrants that the information will be stored in accordance with latest version of National Institute of Standards and Technology Special Publication 800-53.

3. The Contractor shall industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this contract.

**BB. DATA AUTHENTICITY AND INTEGRITY:** Contractor shall take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. The Contractor shall be responsible during the terms of this contract, unless otherwise specified elsewhere in this contract, for converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.

**CC. SECURITY BREACH:**

1. Response: Upon becoming aware of a Security Breach, or of circumstances that are reasonably understood to suggest a likely Security Breach, the Contractor shall timely notify the University consistent with applicable state or federal laws, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, the Contractor shall not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
2. Liability:
  - a) If the Contractor must under this contract create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, the Contractor shall reimburse the University in full for all costs incurred by the University in investigation and remediation of any Security Breach caused by the Contractor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.
  - b) If the Contractor will NOT under this contract create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, the Contractor shall reimburse the University in full for all costs reasonably incurred by the University in investigation and remediation of any Security Breach caused by the Contractor.

**DD. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUEST FOR DATA:**

1. Except as otherwise expressly prohibited by law, Contractor shall:
  - a) immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - b) consult with the University regarding its response;
  - c) cooperate with the University's reasonable requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - d) upon the University's request, provide the University with a copy of its response.
2. If the University receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by Contractor, the University will promptly provide a copy to Contractor. Contractor shall promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response.

**EE. DATA TRANSFER UPON TERMINATION OR EXPIRATION:**

1. Upon termination or expiration of this contract, Contractor shall ensure that all University Data are securely returned or destroyed as directed by the University in its sole discretion. Transfer to the University or a third party designated by the University shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition. In the event that the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred University data. The Contractor agrees to provide documentation of data destruction to the University.
2. Contractor shall notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. Contractor shall also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor shall work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

**FF. AUDITS:**

1. The University reserves the right in its sole discretion to perform audits of Contractor at the University's expense to ensure compliance with the terms of this agreement. The Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
2. If the Contractor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data which has been identified to the Contractor as having the potential to affect the accuracy of the University's financial statements, Contractor shall at its expense conduct or have conducted at least annually the following:
  - a) American Institute of CPAs Service Organization Controls (SOC 2) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests the Contractor's security policies, procedures and controls;
  - b) Vulnerability scan of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this contract; and
  - c) Formal penetration test of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this contract.
3. Additionally, the Contractor shall provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this contract. The University may require, at University expense, the Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

**GG. COMPLIANCE:**

1. Contractor shall comply with all applicable laws and industry standards in performing services under this agreement. Any Contractor personnel visiting the University's facilities must comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.

2. Contractor warrants that the service it will provide to the University is fully compliant with relevant laws, regulations, and guidance that may be applicable to the service, such as: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.
3. If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to the Contractor's service provided to the University, the Contractor shall, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the request.

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