

SPECIAL TERMS AND CONDITIONS

- A. **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 William & Mary hereby known as "University" or "W&M" will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the University has purchased or uses its products or services without the prior written approval from the University.
- B. **ADDITIONAL GOODS AND SERVICES:** The contract should include provisions to acquire other goods or services that the supplier provides than those specifically solicited. The provision should include additional goods and/or services under the same pricing, terms and conditions 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, and should be provided at favored nations pricing, terms and conditions.
- C. **ALTERATIONS TO PROPOSALS:** Prior to submission of proposals, alterations may be made, but they must be initialed by the person signing the proposal. The proper procedure is to draw a single line through the information to be changed, insert the desired information, and initial the change. Erasures, typewriter strike-overs, or the use of correction fluid on proposal form that affect unit price, quantity, quality, or delivery may result in the rejection of the line item involved in the proposal.
- D. **RIGHT OF AUDIT:** The University reserves the right to audit or cause to be audited the Selected Firm's books and accounts regarding the University's account at any time during the term of this Agreement and for five years thereafter. The Selected Firm will make available to the University all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not limited to, the right of the University to require that the Selected Firm perform self-audits within reasonable parameters established by the University.
- E. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the University shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- F. **IDENTIFICATION OF PROPOSAL:** The signed proposal must be included in the electronic submittal to buyW&M, as noted on the RFP.
- G. **LATE PROPOSALS:** To be considered for selection, electronic proposals must be received by Supply Chain Services prior to the designated date and hour via buyW&M as noted in the RFP. Proposals received in buyW&M after the date and hour designated are automatically disqualified and **will not be considered. It is the sole responsibility of the Offeror to ensure that its electronic proposal is submitted via buyW&M by the designated date and hour.**

Proposal receipts and openings scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regular business day.

- H. OFFEROR UNDERSTANDING OF REQUIREMENTS: It is the responsibility of each Offeror to inquire about and clarify any requirements of this solicitation that are not understood. The University will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible Sr. Sourcing Specialist at Supply Chain Services. Offerors must ensure that written inquiries reach the Sr. Sourcing Specialist at least five (5) days prior to the time set for receipt of proposals. A copy of all inquiries and the respective response will be provided in the form of an addendum to all Offerors who have indicated an interest in responding to this solicitation. Your signature on your proposal certifies that you fully understand all facets of this solicitation. These questions may be sent by email to the Sr. Sourcing Specialist using the Understanding of Requirements form included in the solicitation.
- I. OFFER ACCEPTANCE PERIOD: Any offer in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the offer may be withdrawn at the written request of the Offeror. If the offer is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- J. CONFLICT OF INTEREST: The Offeror represents to the University that its entering into this agreement with the University does not entail any violation of the Virginia Conflict of Interest Act.
- K. CANCELLATION OF CONTRACT: The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, approximately 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period approximately 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.
- L. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the University, 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 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 to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- M. INDEPENDENT CONTRACTOR: The selected Offeror shall not be an employee of the University, but shall be an independent Contractor. The Contractor shall indemnify and hold the University harmless with respect to all withholding, social security, unemployment compensation and all other taxes or amounts of any kind relating to employment of any labor or other persons providing services to the University under this agreement. Nothing in this agreement shall be construed as authority for the Contractor to make commitments which shall bind the University or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.
- N. 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.

- O. STANDARDS OF CONDUCT: The Contractor shall be responsible for controlling employee conduct, for assuring that its employees are not boisterous or rude, and assuring that they are not engaging in any destructive or criminal activity.
- P. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University 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.
- Q. TERMINATION: If the Contractor fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to the Contractor.
- R. TERMINATION FOR CONVENIENCE: This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the University. There are no additional costs or financial obligations to the University upon termination for convenience.
- S. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER: Any individual Order placed under this Agreement may be terminated, in whole or in part, by the University for its convenience, at any time up to thirty (30) days advance written notice to the Contractor. There are no additional costs or financial obligations to the University upon termination for convenience.
- T. CONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the good/services specified.
- U. WORK SITE DAMAGES: Any damages to existing utilities, equipment, finished surfaces and to the University's property caused by the acts of omissions of the Contractor's agents, employees or invites shall be repair/restored to the University's satisfaction at the Contractor's expense.
- V. VIRGINIA FREEDOM OF INFORMATION ACT: Except as provided below, once an award is announced, all proposals submitted in response to the RFP will be open to the inspection of any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by firms as part of its proposal will not be subject to the public disclosure under the Virginia Freedom of Information Act; however, the firm must invoke the protections of this section prior to or upon submission of its proposal, and must identify the specific data or other materials to be protected and state the reasons why protection is necessary. Firms may not request that its entire proposal be treated as proprietary information.
- W. eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: The solicitation/contract may result in multiple purchase order(s) with the eVA transaction fee specified on the eVA website.

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public

bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall register in the eVA Internet e-procurement solution.

Registration is also required in [buyW&M](#), William & Mary's procure-to-pay system.

- X. BACKGROUND CHECKS: A. Prior to any employee of the Contractor, or any employee of any subcontractor, being granted access to any building or property of W&M, Contractor is required to use reasonable business judgment in the hiring and selection of employees, including completion a background investigation of the employee. A background investigation includes a state and federal criminal history check as well as a check of the national sex offender registry. The state criminal history check shall include all locales that the individual has lived in within the last 10 years. The costs of the full background investigation shall be borne by the Contractor, without recourse to any amendment to the contract with W&M or adjustment of its costs; this shall not affect any contract between the Contractor and any of its subcontractors. B. The Contractor shall use a criminal background check vendor that complies with the Fair Credit Reporting Act. The following are W&M's acceptable sources for criminal background check information: the Virginia State Police SP230 Criminal History, the Sex Offender and Crimes Against Minors Name Search, Truescreen.com, USAINTEL, Hireright, and Lexis-Nexis or any comparable vendor. C. Upon request, the Contractor shall provide W&M with the results of any background check performed. The Contractor shall cooperate in any W&M audit of the Contractor's background investigation procedure and process. D. For the benefit and protection of the W&M community, any Contractor or subcontractor employee whose background check includes listing in any sex offender registry or any felony convictions shall not work on the campus. Any history of misdemeanor drug crime, assaultive behavior, theft, or threatening communications within last 5 years shall not work on campus. The Contractor has the responsibility to inform any employee of such restriction. If the Contractor believes that a particular employee should be granted such access despite the employee's criminal record, it may request a waiver by sending to the Chief of the William & Mary Police Department a copy of the full background investigation together with the reason(s) for requesting a waiver. The decision of the Chief of the William & Mary Police Department is final. E. The Contractor shall require its employees who have access to the buildings or property of W&M to disclose to the Contractor within 48 hours of conviction of any criminal convictions occurring while this contract is in force. The Contractor shall require any subcontractor to require its employees who have access to the buildings or property of W&M to disclose to the Contractor and the employing subcontractor within 48 hours of any criminal convictions occurring while the applicable subcontract is in force. The Contractor shall notify W&M contract administrator within 48 hours of being so notified. If the criminal conviction is for possession of drugs, weapons violations, or violence, the Contractor shall ensure that the employee immediately departs the buildings or property of W&M for the duration of the contract. F. The Contractor shall require that its employees are free of the influence of alcohol, as well as controlled substances not prescribed by a licensed physician and/or not being used in accordance with medical advice. Upon the request of W&M, the Contractor shall subject such employees to random drug and alcohol testing in accordance with guidelines similar to those set forth in 40 CFR Part 40. The Contractor shall require any subcontractor to require its employees to be free of the influence of alcohol, as well as controlled substances not prescribed by a licensed physician and/or not being used in accordance with medical advice. Upon the request of W&M, the Contractor shall require any subcontractor to subject such employees to random drug and alcohol testing in accordance with guidelines similar to those set forth in 40 CFR Part 40. Any drug and alcohol testing shall be done at a vendor chosen by W&M at the expense of the Contractor. G. The Contractor's failure to comply with these terms, or its failure to strictly require any subcontractor's compliance, shall constitute grounds for the immediate termination of this contract, unless waived in writing by W&M.

- Y. **Small Business Subcontracting and Evidence of Compliance**
It is the goal of the University that 42% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a DSBSD-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall not exclude DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No bidder/offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DSBSD) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- Z. **Compliance with Law (if applicable)**
All goods and services provided to [William & Mary] shall be done so in accordance with any and all local, state and federal laws, regulations and/or requirements. This includes any applicable provisions of FERPA or the "Government Data Collection and Dissemination Practices Act" of the Commonwealth of Virginia.
- AA. **Continuity of Service**
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 Agency 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 agency-owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to the successor; and
3. That the agency contractor officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- BB. **Records Retention of Unsuccessful Proposals**
For purposes of William & Mary Supply Chain Services, unsuccessful proposals shall be retained for a 1 year period after the notice of award to a successful bidder is posted to ensure the contract implementation is sufficiently underway before records are disposed.
- CC. **FORCE MAJEURE.**
In no event shall either party be liable to the other for cancellation or postponement or deemed in breach of the Agreement (or PO if using Purchase Order) based on circumstances resulting from any cause beyond either parties control including, but not limited to, federal or state governmental orders or lack thereof, legislation, regulations, labor strikes, epidemic, pandemic, immediate threat of mass casualties or contagious illness or disease, act of war, riot, mass shooting, terrorism, acts of God, fires , severe weather conditions, floods, curtailment of transportation, electrical failure or any event that prohibits attendees being able to attend the event. Parties agree to minimize the damage of the Force Majeure Event to fullest extent possible. Notices shall state the nature of the Force Majeure Event, actions the party wishes to take, and if applicable a plan to mitigate any delays caused by the event. Such Notice shall not subject either party to any penalties, liquidated damages, or forfeiture of any prepayment. All deposits being held will be promptly refunded for the entire amount received from either party.

DD. **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 University 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 University under this Agreement. Prior to the University agreeing to a price increase under this Section, the contractor must provide to the University, the following documentation, all of which must be satisfactory to the University: - 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 University 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 University 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 University at a lower cost from a different source located outside of the country against which the tariff has been imposed. To also include: 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 University, written instructions authorizing the University 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 University agrees to a price increase under 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 University 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 University, including, but not limited to those kept by the contractor's agents, assigns, successors, and subcontractors. In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in the University'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 University's payment of additional sums due to tariffs shall be fraud against the taxpayers' providing support to the University and subject contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.