

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HUMAN RESOURCE  
MANAGEMENT**

**REQUEST FOR PROPOSALS**

For

**EXECUTIVE SEARCH CONSULTING SERVICES**

February 9, 2009

## REQUEST FOR PROPOSALS DHRM09-1

**ISSUE DATE:** February 9, 2009

**TITLE:** **Executive Search Consulting Services**

**ISSUING AGENCY:** Commonwealth of Virginia  
Department of Human Resource Management  
Attn: Dan Hinderliter  
James Monroe Building  
101 N. 14<sup>th</sup> Street  
Richmond, VA 23219

**Contract Participation:** Under the authority of the Code of Virginia 2.2-4304. Cooperative Procurement, it is the intent of this solicitation and resulting contract(s) to allow for cooperative purchasing by Commonwealth of Virginia State Agencies. A list of all Commonwealth of Virginia State Agencies (Agencies) is available at [http://www.virginia.gov/cmsportal3/government\\_4096/state\\_website\\_list.html](http://www.virginia.gov/cmsportal3/government_4096/state_website_list.html)

Participation in this cooperative procurement is strictly voluntary, and does not preclude participating Agencies from using other contracts or competitive processes. The resultant contract(s) will be extended to the Agencies to purchase at contract prices in accordance with contract terms. The Contractor shall notify the Lead Agency in writing of all Agencies accessing the contract, and provide quarterly usage reports to the Lead Agency.

No modification of this contract or execution of a separate contract is required to participate. Participating Agencies shall place their own orders directly with the Contractor(s) and shall fully and independently administer their use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the Lead Agency.

The Lead Agency shall not be held liable for any costs or damages incurred by any other participating Agencies as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the Lead Agency is not responsible for the acts or omissions of other Agencies and will not be considered in default of the Agreement no matter the circumstances.

**Period of Contract:** Two Years from Mutually Agreed upon Start Date with Three (1) One Year Renewal Options in Accordance with the Terms and Conditions herein.

**Sealed Proposals** will be received until **2:00 p.m. Friday February 20, 2009** for furnishing the services described herein. Proposals will be opened on february 20, 2009 at 2:00 p.m. and offeror's names shall be read aloud.

**All Inquiries Shall Be Directed In Writing To:** Dan Hinderliter, Director of Contracts & Finance,

**E-mail:** dan.hinderliter@dhrm.virginia.gov **E-mail inquiries are preferred.** (Phone 804-371-7990)

**IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO:** Commonwealth of Virginia, Department of Human Resource Management, James Monroe Building, 12<sup>th</sup> Floor, 101 North 14th Street, Richmond, Virginia 23219, Attn: Dan Hinderliter. Package Must Be sealed and Clearly Labeled RFP #DHRM09-1.

**Note:** This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1D or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

In compliance with this request for proposal and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish executive search consulting services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

**I. PURPOSE**

The purpose of this Request for Proposals (RFP) issued by the Commonwealth of Virginia's Department of Human Resource Management is to establish an optional use contract through competitive negotiation for a firm to provide Executive Search Consulting Services to search and locate designated personnel and assist in the hiring process of the most effective candidates for defined positions for the Commonwealth of Virginia's (Commonwealth) executive (At-Will) staffing.

The resulting agreement will be utilized by the Department of Human Resource Management to assist with establishing a job description, search criteria, reviewing candidate's qualifications, interviewing candidates and making further and related recruitment and hiring recommendations to the designated Commonwealth personnel for the hiring of Senior level positions. The Commonwealth may award contracts to more than one offeror for these services.

**II. BACKGROUND**

Currently, the Commonwealth does not have a contractual relationship with consulting firms to provided executive recruiting services. Various state entities procure services on an as needed basis. This contract will facilitate the Commonwealth's goal of providing highly qualified executive staff for positions that serve at the will of the Governor or other Commonwealth entities.

Offeror's Name:	By (Signature in Ink):
Complete Address:	Name (please print) and Title:
	Date:
City/State/Zip:	Federal Identification Number:
Telephone Number:	Facsimile Number:
Duns Number	

**III. STATEMENT OF NEEDS**

- A. The Contractor shall perform these activities in whole (or in part) upon direct written request. All services and work product is subject to the approval of the Commonwealth in its sole discretion:
  - 1. Meet with appropriate Commonwealth management and staff to develop a complete job description, define key criteria, required job skills, and qualifications to be used in the search.
  - 2. Advertise, market and recruit for the position using relevant and appropriate job candidate sources. This may or may not include using sources beyond public advertising and the existing pool of candidates on file with the Commonwealth and/or search firm.
  - 3. Review, interview, screen and otherwise evaluate responding candidates and provide a list of not more than five (5) finalists to be considered, reviewed and interviewed by Commonwealth's management. The qualifications of the selected finalists shall be consistent with those described or determined by the Commonwealth.

4. Provide all standard correspondence and notifications to the candidates, to be approved in advance in writing by the Commonwealth.
5. Provide a list of all applicants, along with a brief profile within fifteen (15) days of the closing date for applications. Conduct pre-screening reference checks and interviews. Submit a more detailed profile of all candidates deemed as semi-finalists, along with recommendations.
6. Conduct thorough background investigation of the finalists. The specific background checks will be in accordance with Commonwealth's or hiring public bodies Human Resource policies and procedures and in recommendations of the Contractor.
7. Perform all work in a confidential manner and report only to the authorizing agencies personnel.
8. Provide recommendations regarding any items and/or issues that the Commonwealth should consider to assure a successful search.
9. Conduct a second search at no additional cost to the Commonwealth if within six (6) months the selected candidate is terminated for reasons involving performance and/or competency.
10. Communicate with the press verbally and/or in writing only after having received written instructions and/or permission from the Commonwealth designated representative from the hiring agency.
11. Perform additional, related search and recruitment services as agreed between the parties.

B. The Commonwealth shall provide:

1. Desired job criteria, skills, qualifications and other related material that is pertinent to the search and recruitment action. See Statement of Needs III A. 1. Job skills and qualifications are described there that the contractor will meet with the Commonwealth to develop. This statement says that the Commonwealth will provide the desired job criteria, skills and qualifications.
2. The designated representative to act as the Contractor's primary point of contact for each specific search and recruitment action.

#### **IV. PROPOSAL PREPARATION & SUBMISSION REQUIREMENTS**

A. GENERAL REQUIREMENTS

1. RFP Response In order to be considered for selection, Offerors must submit a complete response to the RFP. One (1) hardcopy original, so marked, and (6) electronic copies, and (1) redacted version in both hard copy and electronic format each on a CD, must be submitted to the Issuing Agency. No other distribution of the proposal shall be made by the Offeror.
2. Proposal Preparation
  - a. Responsiveness.

Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission

of missing information and/or giving a lower evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

b. Content

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

c. Organization

Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

d. Binding

Each copy of the proposal shall be contained in a single 3-ring binder. All documentation submitted with the proposal should be placed in that single volume.

e. Ownership of Material

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 protection of Section 11-52D of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must SPECIFICALLY identify the data or materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary, or trade secrets is NOT ACCEPTABLE and shall result in

## REJECTION of the proposal.

### 3. Oral Presentation

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Issuing Agency will schedule the time and location of these presentations. Oral presentations are an option of the Purchasing Agency and may not be conducted.

## B. SPECIFIC PROPOSAL REQUIREMENTS

Proposals should be as thorough and detailed as possible so that the Issuing Agency may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. Return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
2. Capability and Skill - Offeror's financial capability, qualifications, and skill to perform the service stated in the proposal, to include but is not limited to:
  - a. Background information about the company and experience in providing the services described herein.
  - b. Describe how the organization's infrastructure will enable Offeror to provide the quantity and quality of personnel required by the Commonwealth in implementing this contract. Describe organization's key personnel and organizational chart including Account Manager, management (internal and external support) and non management employees that will be utilized to consult, perform and administer the overall executive search consulting services and associated customer services support functions. This information will include but not be limited to:
    - Background information about the company and the number of years in the executive search consulting services business.
    - Provide the number of staff that will be involved in the support of the resulting contract.
    - Provide resumes of key personnel. Provide key personnel's name, title and the narrative explaining key personnel's functions to be performed in support of this contract. (Account Manager, consulting, customer service functions, billing, etc.)
    - Specific reasons for selecting each of the personnel to be assigned to this contract.
    - Provide the number and physical location of local/regional office(s) that will service and administer the Commonwealth account.
    - If applicable, provide the city and state of other offices that will be servicing this account.
    - Provide the number of successful executive employment searches Offeror has placed candidates in 2007 and 2008.
    - Provide the average fill ratio of executive search request filled for other clients.
    - Provide the average time to fill request for executive employment searches for other clients.

- The Commonwealth prefers Contractor establish one point of contact for servicing the needs of this contract. This should include but not be limited to; where point of contact will be located, how the Commonwealth will communicate with point of contact, how process will operate, if Contractor will provide toll free access, web page, etc.
  - c. The company's methodology towards search and recruitment actions, what makes the methodology and service unique, a general timeline of events for a typical executive search and recruitment action and the company approach and timeline for expediting the process.
  - d. A detailed description of the company's record for successful and unsuccessful search and recruit actions in the public sector.
  - e. Contractor will provide copies of their most recent audited financial statements and annual reports.
  - f. Screening, Testing and Performance Indicate which services, tests, etc. are performed and methods used to evaluate. To include but not be limited to skills testing, skill assessments, automated skill matching, personal interviews, college recruiting, reference checks, drug screening, background checks, prior employment verification, employment and assignment performance evaluation. Offeror shall provide confirmation of test validity.
3. Provide a minimum of five (5) references in Attachment A. Three of the five references executive search consulting service is currently being performed. References will include company name, contact name and title, phone number and address, and length of contract, annual billings provided through executive search services, and narrative statement of the scope of services provided. It is important that references include at least three from the public sector and one similar in scope to the Commonwealth and a recent account Offeror has lost with an explanation thereof. These references must also be pertinent to the Offeror's personnel that are to be assigned to this contract. Provide a minimum of (3) references in Attachment B for each subcontractor supplying executive consulting services in conjunction with Offeror. References will include company name, contact name and title, phone number and address, and length of contract, annual billings positions provided executive search services, and narrative statement of the scope of services provided. It is important that references include at least one from the public sector and one similar in scope to the Commonwealth and a recent account subcontractor has lost with an explanation thereof.
  4. Proposed price for the services described herein. Price should be provided in each of the following two ways:
    - a. Fixed price per search and/or recruit action.
    - b. Time and materials price associated with each search and/or recruitment action.
  5. Any other information which the Offeror feels the Commonwealth should consider in evaluating the proposal. Describe any problems, challenges and impact thereof Offeror foresees in fulfilling contract requirements.
  6. SWAM Utilization – Summarize the planned utilization of DMBE certified small businesses and businesses owned by women and minorities under the contract to be awarded as a result of this solicitation. Forms for submission of this data

are provided as Attachment C herein.

## **V. EVALUATION AND AWARD CRITERIA**

### **A. EVALUATION**

Proposals will be evaluated by an Evaluation Team using the following criteria. The criteria are not necessarily given below in priority order.

1. Capability and skill (see detailed description above). 10 percent
2. Efficiency of the methodology. 15 percent
3. Effectiveness of the methodology (success record in the public sector). 10 percent
4. References from other clients. 20 percent
5. Proposed price. 25 percent
6. SWAM Utilization 20 percent

### **B. AWARD OF CONTRACT**

Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror or Offerors which, in its opinion, have made the best proposal, and shall award the contract(s) to Offeror(s). The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Offeror's proposal as negotiated

## **VI. REPORTING AND DELIVERY REQUIREMENTS**

The Contractor shall meet the following reporting and delivery requirements:

- A. Contractor shall provide semi-annual usage report to DHRM. Report shall provide at a minimum: Contact person at hiring agency, date executive search request received, date position filled, position title, number of candidates presented and type of background checks performed. Reports will be provided to DHRM in a mutually agreed upon electronic format.
- B. On demand reports: Due within two weeks of request. The agency will have the capability to provide detailed reports, in electronic format.
- C. Contractor who is awarded a contract in which provision of a small, women or minority-owned (SWAM) procurement plan.

When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount

subcontracted, category type (small, women, or minority-owned), and type of product/service provided. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by DOA or other appropriate remedies may be assessed in lieu of withholding such payment.

The Contractor shall provide to DOA documentation that the contractor has utilized SWAM in accordance with its SWAM utilization plan. Documentation shall be provided on or before request for final payment.

## **VII. METHOD OF PAYMENT**

In accordance with the Commonwealth of Virginia Prompt Payment Act, invoices shall be payable within thirty (30) days after executive search and hiring process is complete and receipt of valid invoice. At a minimum, the following information shall be annotated on all invoices:

- Contract Number
- Contractor's Federal Tax Identification Number (FIN) or Social Security Number (SSN), if applicable.
- Contractor's address, telephone number, and point of contact
- Date's of provided services
- Type of services provided

## **VIII. GENERAL TERMS & CONDITIONS**

### **8.1 VENDOR'S MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendor's Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the Department's office on the 13th floor of the James Monroe Building. In addition, a copy can be obtained from the Department of General Services' Division of Purchases and Supply by calling (804) 786-3842.

### **8.2 APPLICABLE LAWS AND COURTS**

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations.

### **8.3 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.

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

#### **8.3.1 During the performance of this contract, the Contractor agrees as follows:**

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or

national origin, or disabilities, except where religion, sex or national origin 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.

8.3.2 The Contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each sub contractor or vendor.

#### 8.4 ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, Offerors certify (1) 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 sub contractor in connection with their proposal, and (2) that they have not conferred on or promised, 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, unless consideration of substantially equal or greater value was exchanged.

#### 8.5 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.

#### 8.6 DEBARMENT STATUS

By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals for the type of goods or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### 8.7 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.

#### 8.8 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.

## 8.9 CLARIFICATION OF TERMS

If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact William G. Gregory in writing no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Department.

## 8.10 PAYMENT

### 8.10.1 To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payments 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 payments 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.

### 8.10.2 To Subcontractors:

- a. A Contractor awarded a contact under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s) in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) day 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.

#### 8.11 PRECEDENCE OF TERMS

Paragraphs 6.1 - 6.10 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.

#### 8.12 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 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 contemplated therein.

#### 8.13 TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

#### 8.14 ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

#### 8.15 CHANGES TO THE CONTRACT

Changes can be made to the Contract in any one of the following ways:

8.15.1 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.

8.15.2 The Department 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 such things 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 Department 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 Department'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 to 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 Department with all vouchers and records of expenses incurred and savings realized. The Department 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 Department within thirty (30) days from the date of receipt of the written order from the Department. 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 resolve in accordance with the procedures for resolving disputes provided by the Disputes Clause (paragraph 8.12) of this contract and in accordance with the disputes provisions of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of 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 Department or with the performance of the contract generally.

#### 8.15 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.

#### 8.17 INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

##### INSURANCE COVERAGES AND LIMITS REQUIRED:

- 8.17.1 Worker's Compensation - Statutory requirements and benefits.
- 8.17.2 Employee Liability - \$100,000
- 8.17.3 Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

#### 8.18 ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the Agency's web site, [www.dhrm.virginia.gov/customers./vendors.html](http://www.dhrm.virginia.gov/customers./vendors.html) , for a minimum of 10 days.

#### 8.19 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 controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that 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.

#### 8.20 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, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or received 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.

#### 8.21 eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), 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.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

8.21.1 eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, online registration, and electronic bidding, as they become available.

8.21.2 eVA Premium Vendor Registration Service: \$200 Annual Fee plus a

Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

- 8.21.3 Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

**Note: Vendors are strongly encouraged to register your company prior to submitting a bid or offer. Failure to register will result in your bid or offer being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.**

## IX. SPECIAL TERMS AND CONDITIONS

### 9.1 COST LIMITS

The Contractor is responsible for all the costs of implementing and administering the program. The Department is responsible for ensuring that the Contractor receives payment of all fees that are established pursuant to the contract which results from this RFP. Any cost incurred by the Contractor to address the tasks and responsibilities identified in this RFP which exceeds the contractually established fees is the risk of the Contractor.

### 9.2 RENEWAL OF CONTRACT

The term of this contract is two years with three one-year renewal options. For the one-year renewal options, the contract may renew annually subject to the following.

- 9.2.1 The Contractor shall advise the Department in writing no later than 2:00 PM on the last business day before September 16 that the offeror is willing to renew the contract on the same terms and conditions as currently in force or as modified pursuant to a request from the Department.
- 9.2.2 All Contractors require a finding by the Department that the Contractor's performance has been satisfactory. Such findings are within the sole discretion of the Department but will be based on materially important issues such as the plan's accreditation status (if applicable), employee satisfaction, and the amount of liquidated damages due the Department because of failure of the Contractor to meet standards.
- 9.2.3 If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price for the additional one year shall not exceed the contract price of the original 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.
- 9.2.4 If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price for the subsequent renewal period shall not exceed the contract price of the previous renewal period increased/decreased by more than the percentage increased/decreased 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.

### 9.3 TERMINATION, SUSPENSION and CANCELLATION of CONTRACT

Either party may terminate this contract for its sole convenience effective July 1 of any year by delivery of written notice at least nine months prior to the effective date of cancellation, that is, by the previous September 1. Some school groups in the Local Choice program have plan years ending on September 30<sup>th</sup>. Therefore, it is agreed that for any Contractor having enrollment in one or more of these school groups, the termination of this contract as applied to the particular school group will be effective September 30 following the July 1 termination date of the contract.

If the Department determines, in its sole discretion, that limiting additional enrollment would enhance the administration of this contract, the Department may limit enrollment or suspend entirely new enrollments by a written order to the Contractor.

Furthermore, in the event of emergency requirements which could not have reasonably been foreseen, the Department reserves the right to cancel and terminate this contract, in part or in whole without penalty, upon 60 days written notice to the Contractor.

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.

### 9.4 PAYMENTS and INTEREST

9.4.1 The Department will send or make available (through the internet) to the Contractor an electronic file of changes in eligible enrollees and eligible dependents in a form to be mutually agreed upon on a daily or other basis as may be mutually agreeable. Contractor agrees that BES shall be the only official source for any eligibility file maintained by the Contractor for any claims payment made by the Contractor, unless changes are agreed to in writing by the Department.

9.4.2 The standard form of payment utilized by the Commonwealth is by EDI (See Appendix 9 for description). Unless a different method is agreed upon through negotiations, each Contractor must complete the EDI agreements required by the Department of Accounts.

9.4.3 The Contractor shall deliver only those services actually ordered by the Department. The Department will accept and pay only for those services which have been fully rendered. The Contractor shall invoice the Department each month for services provided during the prior month. Payment will be made by the Department within 30 days of receipt of an approved invoice by the Commonwealth's EDI payment method. Refer to Attachment Three for EDI information.

### 9.5 AUDITS

The Contractor shall assist the Department and the Department's auditors, who may be employees of the Department, employees of other Contractors, or agents of the Department, in the conduct of audits. This assistance shall include the provision of secure, quiet office space, including furnishings and telephones needed by the auditors.

The Contractor agrees to retain all books, records, and other documents relative to the contract which results from this RFP for five (5) years after final payment, or until the conclusion of any audit by the Commonwealth, whichever is sooner. The Department, its authorized agents, and State Auditors, shall have full access to, and the right to examine, any of the Contractor's materials relevant to the contract which results from this RFP.

#### 9.6 CONTRACT REPRESENTATIVES

Both the Department and the Contractor shall appoint a contract representative who shall ensure that the provisions of this contract are adhered to. The Department hereby appoints the Director, Office of Contracts and Finance.

The Contractor shall provide the full name and address of their contract representative including telephone and fax number. In the event of a change in contract representatives, an official written notice shall be provided within 15 days of the change.

#### 9.7 CONFIDENTIALITY OF INFORMATION

The Contractor shall treat all information utilized in its performance of the contract as confidential, personal information. The Contractor shall handle all confidential information in accordance with the Virginia Privacy Protection Act, Virginia Code Section 2.1-377 et seq.. All files, computer data bases and other records developed or maintained pursuant to the execution of the contract are the property of the Department, and shall be delivered to the Department upon demand. The Contractor merely serves as the custodian of the files, and acts as agent for the Department in the payment for services and the performance of other assigned tasks, including assisting the Department with requests under the Virginia Freedom of Information Act.

#### 9.8 COMMISSIONS AND BROKERAGE FEES

The Contractor agrees that, in the performance of this contract, no payments shall be made to brokers or sales persons who are not employees of the Contractor.

#### 9.9 SEVERABILITY

In the event any portion of the contract shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of the contract shall continue in full force and effect.

#### 9.10 FORCE MAJEURE

Neither party shall be deemed to be in default of any of its obligations hereunder, if, and so long as, it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

#### 9.11 SUBCONTRACTING

The Contractor is fully responsible for all work performed under the contract. The Contractor may not assign, transfer, or subcontract any interest in the contract, without prior written approval of the Department. The Contractor shall require all subcontractors to comply with all provisions of this RFP. The Contractor will be held liable for contract compliance for all duties and functions whether performed by the

Contractor or any subcontractor.

#### 9.12 DISPUTES

In accordance with section 2.2-4363 of the Code of Virginia, disputes arising out of the contract, whether for money or other relief, may be submitted by the Contractor for consideration by the Department. Disputes must be submitted in writing, with all necessary data and information, to the Director of the Department of Human Resource Management at the James Monroe Building, 12<sup>th</sup> Floor, 101 North 14<sup>th</sup> Street, Richmond, Virginia 23219. Disputes will not be considered if submitted later than sixty (60) days after the final payment is made by the Department under the contract. Further, no claim may be submitted unless written notice of the Contractor's intention to file the dispute has been submitted at the time of the occurrence or at the beginning of the work upon which the dispute is based. The Department shall render a final written decision regarding the dispute not more than ninety (90) days after the dispute is submitted, unless the parties agree to an extension of time. If the Department does not render its decision within 90 days, the Contractor's sole remedy will be to institute legal action, pursuant to section 2.2-4364 of the Code of Virginia. The Contractor shall not be granted relief as a result of any delay in the Department's decision.

During the time that the parties are attempting to resolve any dispute, each party shall proceed diligently to perform its duties.

#### 9.13 CONTRACTOR AFFILIATION

If an affiliate (as defined below in this paragraph) of the Contractor takes any action which, if taken by the Contractor, would constitute a breach of the contract, the action taken by the affiliate shall be deemed a breach by the Contractor. "Affiliate" shall mean a "parent," subsidiary or other company controlling, controlled by, or in common control with the Contractor, sub Contractor or agents of the Contractor.

#### 9.14 TRANSFER OF FILES

If for any reason the Department decides to no longer contract with the Contractor, the Contractor agrees to transfer to the party designated by the Department, at no cost, all data, records, computer files, other files, and materials of any sort that were maintained for the Commonwealth. The Contractor agrees to assist the Department in understanding, using, and transferring all files and records, including those maintained in computer language.

#### 9.15 ADVERTISING

In the event a contract is awarded as a result of this RFP, the Contractor shall not advertise that the Commonwealth of Virginia, or any agency or institution of the Commonwealth, has purchased, or uses its products or services.

#### 9.16 INDEMNIFICATION

The 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 services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the Department.

#### 9.17 IDENTITY THEFT:

The Contractor assures that any and all personal information and data obtained as a result of performing contractual duties associated with this contract shall be held in strict confidence. Such information shall not be divulged without written permission from the individual and this Agency.

- 9.17.1 All personal information whether electronic or hard copy shall be stored in a manner that will prevent intrusion by unauthorized persons.
- 9.17.2 All intrusions or suspicion of intrusion into secured files containing personal information shall be reported to the Agency within 24 hours of detection.
- 9.17.3 All remedies suggested by the Contractor shall be approved by the Agency prior to being implemented.

ATTACHMENT A

OFFEROR DATA SHEET

The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in your proposal being scored lower.

Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

Vendor's Primary Contact: Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Years in Business: Indicate the length of time you have been in business providing this type of good or service: \_\_\_\_\_ Years \_\_\_\_\_ Months

Vendor Information: FIN or FEI Number: \_\_\_\_\_ Company, Corporation, or Partnership.

Social Security Number: \_\_\_\_\_ If Individual

Indicate below a listing of at least five (5) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

A. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Project: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

B. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Project: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

C. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Project: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

D. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Project: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

E. Company: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Project: \_\_\_\_\_

Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

**ATTACHMENT B**

**OFFEROR SUBCONTRACTOR DATA SHEET**

The following information is required as part of your response to this if Offeror is utilizing a subcontractor as part of this solicitation response. Failure to complete and provide this sheet may result in your proposal being scored lower.

Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

Vendor's Primary Contact: Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Years in Business: Indicate the length of time you have been in business providing this type of good or service: \_\_\_\_\_ Years \_\_\_\_\_ Months

Vendor Information: FIN or FEI Number: \_\_\_\_\_ Company, Corporation, or Partnership

Social Security Number: \_\_\_\_\_ If Individual

Indicate below a listing of at least five (5) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

A. Company: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
Project: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

B. Company: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
Project: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

C. Company: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
Project: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

D. Company: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
Project: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

E. Company: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
Project: \_\_\_\_\_  
Dates of Service: \_\_\_\_\_ \$ Value: \_\_\_\_\_

**ATTACHMENT C**

**SMALL BUSINESS SUBCONTRACTING PLAN**

**Definitions**

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

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

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

**All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at [www.dmbv.virginia.gov](http://www.dmbv.virginia.gov) (Customer Service).**

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

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

**Instructions**

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

**Section A**

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a **(check only one below)**:

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

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

**Section B**

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and

minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

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

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

**Proprietary/Confidential Information Identification**

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 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 § 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the pages numbers, and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a summary of proprietary information submitted shall be submitted on this form. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the offeror refuses to withdraw such a classification designation, the proposal will be rejected. The purpose of providing a redacted version of proposals is to facilitate public information requests.

SECTION/TITLE	PAGE NUMBERS	REASON(S) FOR WITHHOLDING FROM DISCLOSURE