

REQUEST FOR QUALIFICATIONS #1036

FOR

**Design, Creation, and Installation of the Barbara
Johns Statue
on Behalf of the Virginia Commission of Historical
Statues in the United States Capitol**

ISSUED BY

THE COMMONWEALTH OF VIRGINIA

Department of Historic Resources (DHR)

Administrative Services Division

2801 Kensington Avenue

Richmond, Virginia 23221

Issue Date: March 22, 2021

Title: Design, Creation, and Installation of the Barbara Johns Statue

Commodity Code: 05280, 91231

Issuing Agency: Commonwealth of Virginia
Department of Historic Resources
Administrative Services Division
2801 Kensington Avenue
Richmond, Virginia 23221

Location Where Work Will Be Performed: Various Locations

Period of Contract: Award through reasonable expectation of project completion

Qualifications will be received until **4:00 P.M. EST on May 27, 2021**, for furnishing the services described herein.

All inquiries for information should be directed to:

Potential Offerors may communicate only with the procurement official during this procurement process. Direct all communications to Madrika Martin, Procurement Officer, via email to procurement@dhr.virginia.gov with “**Barbara Johns RFQ #38**” in the subject line. Only questions submitted in the aforementioned manner and before the deadline of **4:00 p.m. EST on Thursday, May 6, 2021** will be answered. **Any communication with other staff of the Department of Historic Resources concerning this Request for Qualifications is strictly prohibited and could serve as grounds for disqualification of the potential Offeror.**

All interested offerors shall submit written questions no later than **4:00 p.m. EST on Thursday, May 6, 2021**. Written answers will be provided in addendum format. All official changes, amendments or addenda will be posted the eVA website at www.eva.virginia.gov. It is the responsibility of the potential Offeror to check the web site for these notices.

QUALIFICATIONS MUST BE ELECTRONICALLY SUBMITTED THROUGH eVA. SEE SECTION IV.A.1. It is the responsibility of the Offeror to ensure the Procurement Officer noted above receives the proposal by the specified closing date and time.

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

Name and Address of Firm:

Submitted By:
(Please Print)

Title:

Phone No.:

Zip Code:

Email:

Website:

Signature:

Fax:

Date:

Dunn and Bradstreet No.:

FEI/FIN No:

Size of Business (check one): Micro-Small Small Large
Minority-Owned (check one): Yes No
Women-Owned (check one): Yes No

If your firm is certified by the Department of Small Business and Supplier Diversity (DSBSD), provide your certification number and the date of certification):

Certification number: _____

Certification Date: _____

IMPORTANT: THIS PAGE MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE.

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I. PURPOSE

The Department of Historical Resources (DHR) is issuing a Request for Qualifications (RFQ) of potential offerors that are interested in designing, creating, and installing a statue to honor Barbara Johns that will be installed the US Capitol in Washington, DC

Term

Upon Contract Award until project completion. The desired end date for the entire project should be December 31, 2021. This timeline is contingent upon the approval process engaged in by the Joint Committee on the Library and the Office of the Speaker of the U.S. House of Representatives, and is subject to extension, by mutual written agreement of both parties to any contract executed pursuant to the design and creation of the statue of Barbara Johns.

II. BACKGROUND:

Pursuant to 2 U.S.C. 2131, each state is allowed to have two statues representing two deceased citizens of that state and honor them by having their statues within National Statuary Hall Collection, located in the US Capitol in Washington, DC. Recently, The Robert E. Lee statue, which previously stood in the US Capitol since 1909, was returned to the Commonwealth of Virginia and being housed in an undisclosed location. The Virginia Commission for Historical Statues in the United States Capitol determined that the replacement statue for the Robert E. Lee statue, would be to replace that statue with the late Civil Rights and Student Rights activist, Barbara Johns.

As such, the Department of Historic Resources on behalf the Virginia Commission of Virginia Commission of Historical Statues in the United States Capitol sets forth this RFQ in order to advise how each offeror shall submit their qualifications, provide information for the subsequent Request for Proposals (RFP) that shall follow this RFQ in the establishment of a contract as a result of the RFP. All interested parties that are interested in submitting a proposal to the subsequent RFP **SHALL** submit a response to the RFQ. If an interested party does not submit a request to the RFQ, they will be disqualified in being able to submit a proposal to the RFP.

Selected offerors must coordinate with the Department of Historic Resources to provide all documentation necessary to comply with Commonwealth of Virginia and Federal law regarding the National Statuary Hall Collection in the United States Capitol. Selected offerors shall agree to into all agreements required by federal law to replace the Robert E. Lee statue in the National Statuary Hall Collection in the United States Capitol.

III. STATEMENT OF WORK FOR THE SUBSEQUENT RFP

A. Project Scope

The scope of the project is to create a full-length statue of Barbara Johns in either bronze or marble in compliance with the guidelines set forth by the Architect of the Capitol (see

Attachment A). Background information to guide Offerors in determining the approximate age of Barbara Johns to be represented in the statue will be provided by DHR to help the Selected Offeror create a maquette (a 24 inch to 36 inch scaled model or rough draft of an unfinished sculpture used to visual and test forms and ideas). DHR will submit this maquette to the Congress's Joint Committee on the Library for approval. Once approved, the Selected Offeror will be authorized to create a final full-size maquette in either marble or bronze.

The sculpture should be over life-size, with a height between seven (7) and eight (8) feet. Seven (7) feet is the average statue height in the Statuary Hall Collection. The pedestal on which the sculpture stands must be hollow with a steel frame construction and faced with marble or granite (Virginia materials are strongly preferred, if available). The steel frame/stone facing construction requirement is due to weight issues in the U.S. Capitol. It is recommended that the pedestal be designed and constructed with a removable panel (usually located in the back, on existing statues) to allow access to attachment bolts.

The total height of the statue, including the pedestal, shall be no greater than eleven (11) feet. Within that size range, the combined weight of a *bronze* statue and its pedestal shall not exceed 5,000 pounds; a *marble* statue and its pedestal shall not exceed 10,000 pounds. For a bronze statue, the selected patina and coating must be easily maintained and repaired. Formulas for the patina and coating materials must be provided to the Architect of the Capitol for use during future maintenance.

Pursuant to instructions given by the Architect of the Capitol, due to the design and structural specifications inherent to statues of this size and weight, all pedestals must be designed and approved by a licensed engineer.

The pedestal design is an integral component of the statue. The pedestal design should complement the statue of Barbara Johns as well as provide space to accommodate any appropriate text related to Barbara Johns; however, any final inscriptions or text will be provided by the DHR, upon advice by the Committee, to the Selected Offeror. Inscriptions on the pedestal shall include the name of the state and the name of the person represented. The Architect of the Capitol prefers that inscriptions be carved; however, inscriptions can be raised or cast on a bronze plaque.

The Selected Offeror must attend any official unveiling ceremonies and keep detailed records of the entire artistic process so that it can be documented. The Selected Offeror must also agree to let a photographer, approved by DHR, photo-document the entire process, from the time of Offeror's selection as a finalist through the process of creation of the maquette and final statue. Finally, the Selected Offeror must work closely with DHR staff, the Committee, the Joint Committee on the Library of the U.S. Congress, and the Architect of the Capitol.

The Selected Offeror will be required to keep detailed records and files (including invoices, receipts, timesheets, etc.) documenting time spent, cost of raw materials, and expenses incurred by third parties (e.g., students, apprentices, other studio employees, subcontractors, etc.), throughout the duration of contract award.

B. Project Phases The project will consist of four phases:

Phase One: The Selected Offeror must work with the Committee to determine how Barbara Johns will be memorialized in the statue. This includes at what age Barbara Johns will be depicted, which pose, what clothing he is wearing, props, etc. It will also involve preliminary design of the statue's pedestal which may be subcontracted to ensure engineering certification to design and safety standards. This first phase will be the most important because the design of the statue and pedestal will be determined.

Phase Two: The Selected Offeror will create a maquette and deliver photographs of the maquette from all four sides and the proposed dimensions of the completed statue. The maquette and photographs must be submitted for review and approval, in formats prescribed by the Architect of the Capitol, by the Joint Committee on the Library.

Phase Three: The Selected Offeror will create a full-size clay maquette and pedestal design, including the proposed inscriptions. As at Phase Two, the Selected Offeror must also produce photographs of the maquette from all four sides, dimensions, and engineering drawings of the pedestal, the anticipated weight of the completed statue and pedestal, and the text of any proposed inscription. This must be submitted for review and approval by the Joint Committee on the Library. Any structural, safety, and design concerns raised by the Secretary, the Committee, the Selected Offeror, the Joint Committee, the Architect of the Capitol, or any other party to the contract and process must be addressed before proceeding to Phase Four.

Phase Four: The Selected Offeror will create the completed statue, cast in bronze or carved in marble, and the completed pedestal (Virginia materials are strongly preferred, if available). The Selected Offeror must also produce photographs of the completed statue and pedestal from all four sides as well as any text, dimensions, the final weight of the completed statue and pedestal, and the complete text of any inscriptions. The photographs and accompanying documentation must be submitted in a format prescribed by the Architect of the Capitol for review and approval by the Joint Committee on the Library.

IV. QUALIFICATIONS SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS:

- 1. RFQ Response:** In order to be considered for selection, Offerors must submit a complete response to this RFQ. Qualifications must only be submitted electronically through eVA. One complete response and all required forms and attachments must be uploaded to the eVA VBO application prior to the date and time set for receipt. eVA will not allow an Offeror to upload documents after the cut-off time and date set for proposal receipt. At the eVA website www.eva.ovrginia.gov applicants must log-in as a vendor using their eVA username and password.

Please contact the eVA Customer Care for instructions and/or assistance in uploading documents and/or log-in.

Hours: 8:00 AM to 4:45 PM, Monday through Friday

Phone Toll Free: 866-289-7367

Email: eVACustomerCare@DGS.Virginia.gov

2. Proposal Preparation:

- a.** The response shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b.** The response shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFQ. Emphasis must be placed on completeness and clarity of content.
- c.** Ownership of all data, materials and documentation originated and prepared for DHR pursuant to the RFQ shall belong exclusively to DHR 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 2.2-4342 of the Virginia Public Procurement Act prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.**
- d.** Oral Presentation: Offerors who submit a response to this RFQ may be required to give an oral presentation of their response to DHR. This provides an opportunity for the offeror to clarify or elaborate on the response qualifications. This is a fact finding and explanation session only and does not include negotiation. DHR will schedule the time and location of these presentations. Oral presentations are an option of the DHR and may or may not be conducted.

B. SPECIFIC PROPOSAL REQUIREMENTS:

Proposal(s) must be as thorough and detailed as possible so that the DHR may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal(s):

1. The return of the RFQ cover sheet, all sheets within the RFQ with **“IMPORTANT: THIS PAGE MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE”** at the bottom, **Completed Attachment A and Completed Attachment B**, and addenda, if any, signed and filled out as required (**This constitutes the State form**).
2. The format of each proposal must contain the following elements organized into separate chapters and sections, as the offeror may deem appropriate:

C. STATEMENT OF QUALIFICATIONSS

1. Conceptual Approach

The offeror must provide a detailed written depiction of how the offeror would approach the undertaking the design, creation, and installation of the Barbara Johns statue. This description should be at least one page, but no more than two pages.

2. Artist Essay

The offeror shall write a one (1) page essay illustrating the importance of Barbara Johns contribution in history, how Barbara Johns made an important impact on the Commonwealth of Virginia, and the importance of erecting a statue to memorialize Barbara Johns. In this essay the artist will also explain why the artist has an interest in creating the statue. The artist will also state how they were drawn to perform the work needed to create the Barbara Johns statue.

3. Recent Work

- a. Please provide at least five (5) photos of statues that you have been commissioned to do.
- b. For each photo provided, please provide a written detailed summary of the work presented in the photo. This shall include the artist’s vision for the project, the sentiments the artist attempted to convey though the artwork, the commission paid out for the project, the beginning and end date of the project, and the names of staff that worked on the project.
- c. Contact information for the organization that commissioned the work. The contact information must include the point of contact’s name, address, email address, and phone number. Please make sure that the information provided is accurate and up to date at the time of qualification submission.

4. References

- a. Provide at least three (3) references.
- b. The contact information must include the point of contact's name, address, email address, and phone number. Please make sure that the information provided is accurate and up to date at the time of qualification submission.

5. Offeror Ability to Complete Project

- a. Provide a description of the workspace that will be used and accompanying verifying documentation that will support the claim of having the appropriate workspace to complete the project (i.e. a signed lease and property manager/lessor information).
- b. Staffing Availability documentation that will included the names of staff that will be assigned to completing tasks on the project.
- c. Casting ability should the offeror decide to design and create a bronze statue of Barbara Johns.
- d. Any additional information that the offeror would feel assist the offeror in conveying the ability to design, create, and install the statue.

V. EVALUATION AND AWARD CRITERIA FOR THE SUBSEQUENT RFP:

- A. Award: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting a proposal(s) on the basis of the evaluation factors included in the Request for Proposal, including price, if so stated in the Request for Proposal. 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(s), which, in its opinion, have made the best proposal(s), and shall award the contract to those offerors. DHR may cancel this Request for Proposal 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. (Section 2.2-4359, *Code of Virginia*.) Should DHR 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. DHR will award each line item or project separately and reserve the right to award multiple line items or projects to one vendor.

VI. GENERAL TERMS AND CONDITIONS:

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which

are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “Vendors Manual” on the vendors tab.

- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.24366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

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

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each 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:** Applicable for all contracts over \$10,000:

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFOs:** 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.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is

contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) 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) 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.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT* shall

apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF 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.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. 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, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to 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 *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **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.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

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

- R. **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 equivalent 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. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.

- S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any 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 bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$2,150,000 per occurrence, \$4,250,000 aggregate
(Limits increase each July 1 through fiscal year 2031 per <i>Code of Virginia</i> § 8.01-581.15.)	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

U. **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 DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

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

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

W. **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, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

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

a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:

- (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

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.

Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

Z. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also include DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids/proposals.

AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

VII. SPECIAL TERMS AND CONDITIONS:

A. **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.

B. **AWARD TO MULTIPLE OFFERORS:** 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(s) which, in its opinion, has made the best proposal, and shall award the contract to that/those offeror(s). The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

- C. **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 rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.

- D. **BID ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 60 days. At the end of the 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 canceled.

- E. **CANCELLATION OF CONTRACT:** DHR reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- F. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the agency with 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 his subcontractor(s) and shall assure compliance with all requirements of the contract.

- G. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
 - A. It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DSBSD-certified small business and where it is not 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 include DSBSD-certified women-owned and minority

owned businesses when they have received DSBSD small business certification. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (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.

- B. Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a monthly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women owned, or minority-owned), and type of product or service provided.

- C. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

- D. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on monthly basis, information on use of subcontractors that are not DSBSD-certified small businesses. 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, and type of product or service provided.

- H. **INVENTIONS AND COPYRIGHTS:** The contractor is prohibited from copyrighting any papers, interim reports, forms, or other material and/or obtaining patents on any invention resulting from its/his performance under this agreement, except upon the written direction of the Commonwealth of Virginia. The copyright or patent shall belong to the Commonwealth of Virginia.

- I. **FREEDOM OF INFORMATION ACT:** Ownership of all data, material and documentation originated and prepared for the State is 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 this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

- J. **DRUG FREE WORKPLACE:** Each of the following acts is prohibited by the contractor or his/her employees performing service under the terms of a contract resulting from this solicitation.

- a. Unlawful or unauthorized manufacture, distribution, dispensing, possession or use

of alcohol or other drugs at the workplace.

- b. Impairment or incapacitation in the workplace from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).
- c. By submitting a proposal, offerors certify that they understand these prohibitions, and if awarded a contract as the result of this solicitation, they will comply. They also understand that a violation of these prohibitions is a breach of contract and can result in default action.

K. **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.

L. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in (1) purchase order(s) per project with the eVA transaction fee specified below assessed for each order.

Vendors desiring to provide services to the Commonwealth shall participate in the eVA Internet e-procurement.

M. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

N. **E-VERIFY PROGRAM:** Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and

participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

XI. ATTACHMENTS

- A. State Corporation Commission Form (**This document must be filled out in its entirety and returned with your proposal**)

Attachment A

State Corporation Commission Form

Virginia State Corporation Commission (SCC) registration information. The bidder:

- is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**
- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**
- is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

END OF SECTION

IMPORTANT: THIS PAGE MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE